Public Utilities

FORTNIGHTLY

VOL. VI; No. 6 SEPTEMBER 18, 1930

Who Will Pay the Utility Employee's Pension?

An unsolved problem in regulation

HERE is a timely question in practical economics that threatens to affect the ratepayer, the taxpayer, and the stockholder, as well as the employee himself—until the regulatory bodies and the public service corporations get together and find the right answer. The Interstate Commerce Commission has already ruled that the pension system of a railroad must be charged against the stockholder. Will that precedent be followed by the State Commissions in the case of the public utilities?

BY HERBERT COREY

WHEN I first knew Pat Dugan he had the three prettiest daughters in the Middle West, a little house with some grapevines in the backyard, and a good job on the section at one dollar and a quarter a day. When he retired he had a modest competence. If I knew how he managed it I would write a book, for Jonah and the Whale are a small-time act compared to *What Dugan Did*. Nowadays he sits under his grapevine and enjoys the modest pension which the railroad pays him.

"That pension may stop some day, Pat," I said to him. "The railroad cannot afford to go on paying it, I'm afraid."

Mr. Dugan briefly removed his pipe.

"Ye're a liar," said he.

But I am not. That is the situation which sixty-six of the Class I roads are facing today. The lesser roads are not fretted because few of them pay pensions. The retirement

pay plans which one million and a quarter of the one million and three quarters employees on the Class I roads have looked to for added comforts in their age are shaky. They may go on functioning as is for ten years, twenty years, thirty years. Who knows?

But unless some move is made toward salvation they will founder ultimately. That is sure as eggs is eggs.

THIS is an alarmist statement. Of course. It is written that way of a purpose. It is my hope to arouse interest in a set of facts. At present these facts are siphoning from one to two per cent of the total payrolls of the railroads out of their treasuries.

They will siphon more as time goes on. No one knows how much. No one has ever been able to determine definitely what will be the relation of pension costs to payroll at the ultimate peak.

They are a direct threat to railroad stock values and dividends because these facts are not being handled in accordance with ordinary principles of economy at present. They are potentially ruinous to the roads. The day of that ruin is a long way off, of course. So is the Day of Judgment.

A ruling by the Interstate Commerce Commission is held partly responsible for this uneconomic method of the present.

Yet these facts involve the comfort and happiness of thousands of men and women. Many economists hold that the pensions paid by industry today are in effect the deferred payment of wages long since earned. Such critics would hold that the cessation of pension payments would be the violating of an accepted contract, with all its repercussions of strife and demagoguery and tub-thumping.

PERHAPS these statements are exaggerated. Probably they are. I hope so. Some one may come along to save us. We go on from miracle to miracle in this country. Just when the old folks are packing up the daguerrotypes and log cabin quilts to move out to the poorhouse a city slicker strikes oil in the back forty. The presumption is that he always will.

We forget about the old folks who did not strike oil and who completed their moving. Over the Hills to the Poorhouse has not been on a communal singing program for more than thirty years. We are nationally that way.

Let us assume that I am not justified in these tearful views. I hope that I am wrong. Something may happen to save the pensions which are now being paid to perhaps 100,000 superannuated workingmen in this country at a cost of approximately $50,000,000 to save them in part, at least. Nothing more cruel could be imagined than the enforced withdrawal of their little pensions from these old men. Such a withdrawal would be fought to the last moment by the responsible heads of industry if for no other reason than the selfish one that it would certainly salvage their relations with labor and some elements of politics.

But while assuming that I am wrong, in order to retain the proper American attitude of bland-eyed optimism, let us consider the facts.

For convenience sake the pension entanglements in which the railroads are caught will be considered. It must be noted, however, that if they are in the frying pan other public utility industries are in the fire. If the railroads may not pay for the pension liabilities already accrued out of current income—

The Interstate Commerce Commission rules that such liabilities must be paid for by the stockholders. Out of the stockholders' pockets. I am aware that the form in which this statement is made is open to challenge, but presently we shall see—

Then the stockholders in industry must also pay. The Interstate Commerce Commission says in effect that these accrued liabilities are back debts which should have been discharged when they came due, and that the public of the future must not be saddled with their payment.

The governing facts are not greatly different whether the payer of pensions is a railroad or a flat-iron founder. A rare few private pension systems in the United States are on a sound economic basis. Some of the public utilities' systems might be put on a sound economic basis but for this ruling of the I. C. C. Yet it is difficult to quarrel with it. The I. C. C. takes the position, as it seems to me, that pensions are, in effect, deferred pay.

In which case I, buying my ticket today on the Lake Huron and Mississippi, do not want to pay an extra fare to clean up that wage that should have been paid when my father took the L. H. & M. on his wedding trip. The authorities of the Income Tax Bureau would agree with the I. C. C. on this, I am sure. The inspired smellers-out of tax sources would not permit the Dogtown Iron Works to escape a tax that could be collected against the Lake Huron and Mississippi. If the railroad may not charge its burden of accrued pensions against operating costs, as it does its burden of accrued debt for Oregon pine, then neither could the Dogtown folks.

The conclusion is that most industrial pension systems in the United States are on shaky foundations, with the exception of those established by the few great companies whose profits are so enormous that pension costs are an almost inconsiderable fraction.

The argument follows. I sincerely hope that it can be shown that I am wrong. I am fond of Pat Dugan.

"It is not too much to say that bankruptcy, either actual or constructive, has been the common fate of pension plans. This is especially true in public service," wrote Luther

¶ "The *Interstate Commerce Commission rules that such (pensions) liabilities must be paid for by the stockholders. Out of the stockholders' pockets. . . . The Interstate Commerce Commission says, in effect, that these accrued liabilities are back debts which should have been discharged when they came due, and that the public of the future must not be saddled with their payment.*"

Conant in his "Critical Analysis." "Most of the private systems have been in operation too short a time to test their soundness but the financial stability of many is exceedingly doubtful."

I asked Mary Conyngton, the industrial pension expert of the U. S. Bureau of Labor Statistics, whether this pessimistic forecast had been justified by events. I wanted to know whether any industrial organizations had passed or materially altered their pension plans lately.

"Yes," she said, "I do not know how many. They do not report such action to the Bureau. Naturally, they do not care for advertising that can be avoided."

"What was the reason why such action was taken?"

"There is only one reason," said she. "The lack of money."

Note that this lack of money has nothing, so far as I know, to do with whatever business depression we may be having at this time. Of course, a shortage in profits would react against the stability of the pension systems. But the underlying reason why these systems are going *phut* is that they were unsoundly based. Mathew Woll of the American Federation of Labor says that:

"There are five hundred industrial institutions, among them the very strongest, which are piling up obligations which will in the next few years require very large expenditures for which no provision is now being made."

In the 1925 report of the New York State Superintendent of Insurance is a parallel statement: "A large percentage of the existing pension systems were established on unsound bases. Bitter disappointment is in store for prospective beneficiaries."

THESE pessimistic criticisms might be multiplied. Some one has noted that the total pension reserves of the private pension systems of this country would not equal two years' demands upon them. The Pennsylvania Commission noted that two thirds of the plans surveyed in 1926 had no funds set aside and were making payments out of income. "The costs are becoming so burdensome that even some of the largest and strongest concerns are being forced to alter, reduce, or abolish their pension plans."

The Industrial Relations Counselors analyzed 466 plans, which covered 4,000,000 employees, of which the railroads furnished 42 per cent and other public utilities 17 per cent. In the restrained and diplomatic fashion common to actuarial advisers—after reading an actuarial document one feels the simpler forms of expression are bawdy and profane—an emphatic warning was given the financial officers of pension-paying institutions. Read it. Then translate it into your own words:

"The question has been raised whether the balance sheet of a concern having a pension system in operation is correctly stated unless the accrued pension liability is stated with whatever accuracy is obtainable."

That seems to mean to me that a balance sheet has been slightly cooked if the pension liability is omitted. Now let me raise a collateral question:

"How many concerns having pension systems in operation state in their

A Commission Warning against the Payment of Pensions Out of Revenue

"EVERY critic of our pension systems, so far as I know, has pointed out the inevitable danger into which the pension paying organizations are running if they continue to pay pensions out of revenue. Various pension plans have been offered, of course, but I do not think that a single responsible critic has ever offered one in which the principle of funding was not approved.

"Then why do not the railroads fund?

"Because the Interstate Commerce Commission will only permit that funding on terms which the railroads have utterly rejected."

balance sheets the accrued liability for pensions? Have any so stated?

"Then what is wrong with their picture?"

THE reason underlying this gloomy view of the industrial pension situation is a simple one. Those who established the pensions did not think far enough ahead. That's all. They were moved by—well, by whatever motives you please; humanitarian or selfish; by a desire to get more and better work for their dollar or by a kindly wish to make the declining years of their superannuated employees somewhat happier; the motives are not under examination at this moment. It is not why they did it but what they did that interests us.

They did not realize that the growth of a list of pensioners makes that of Jonah's gourd resemble that of a petrified tree. The future was not merely a sealed book to them. The book had been buried under the old mill. They were long on sweetness and light and short on mathematics. As the special committee of the Merchants' Association of New York put it:

> "The somewhat unfortunate experience in the United States has been due to the superficial character of the investigation which has preceded most pension plans . . . by persons unaware of the fundamental questions involved. Patent fallacies endlessly perpetuated themselves."

IT would not be fair to select a few utilities to furnish points for this moral and let others equally unfortunate and inept go unnamed. If the organizations referred to are anonymous, however, the figures may be accepted as reliable. They show the ungodly fashion in which a pension plan whoops it up after it has once been started. As a general rule the workman is permitted to retire at sixty or sixty-five years of age. It is usually required that he shall have

put in twenty-five years' service. If he has dropped too far below his par of usefulness the company ordinarily does retire him at that age. His retirement is usually compulsory when he reaches sixty-five. The pension is usually a percentage of the average salary paid him in the last ten years of his active life multiplied by his years of service. The Bureau of Labor Statistics states that it rarely goes below $25 a month in practice.

"One might say that no two plans are alike," I was told in the Bureau of Accounts of the Interstate Commerce Commission. "They resemble each other on one point only. No man may stay on the payroll after he has reached seventy."

One of the smaller companies began with an initial payment of $37,031 for the first year's pensions. There is no evidence at hand that the company made more than a normal growth, but at the end of the twelfth year the annual pension cost had become $199,100. The experience of this company is selected because it is a more than usually pertinent illustration.

At the age of sixty-five, which is the year at which this company retired its men after twenty-five years' service, the expectancy of life is twelve years. It may be assumed, then, that at the end of the twelfth year of its pension plan nearly all the pensioners it began with were still hearty on the rolls, and that others had been added on each of the intervening years. By this time its original pension cost had been multiplied more than five times and it had thirteen years to go before its theoretic peak would be reached.

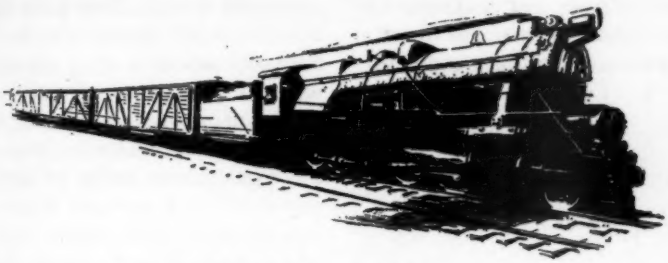
Its theoretic peak. As a matter of fact actuarial experience has shown that the peak is sometimes not reached for forty years. One of the great railroad systems reports that its pensioners increased at the rate of 6.7 per cent annually for forty-three years.

Another huge railroad system began to pay pensions in a moderately small way in 1900. In that year its disbursements were $235,174, which was .5 per cent of the payroll. In its thirtieth year the disbursements had reached the staggering sum of $6,665,000 and the personnel had increased from 85,000 to an estimated 200,000. Five tenths of one per cent of the payroll paid the first year's pensions, but it required 1.92 per cent of the payroll of $388,000,000 to pay the thirtieth pension.

We are approaching the sore center of this article. As that system grew—and as every system grows, and growth should be the normal state of American business—each year an increasing list of pensioners come on the rolls. If this company does not reach the peak of its pension roll for forty-three years, as was the case with one of its great rivals, its pension liability will continue to grow for thirteen years to come. If its expansion has been greater during its term of pension payment than the rival referred to, then the curve of its pension payments must rise higher and be projected farther into the future. That is elementary.

It is not possible to say what part of the annual payroll would then be

(*Continued on page 330*)



Railways that Have Pension Plans

	Adopted	*Amended*
Atchison, Topeka & Santa Fe	1907	1911, 1912
Atlantic Coast Line Railroad Company	1904	
Baltimore and Ohio Railroad Company	1884	1926
Buffalo, Rochester & Pittsburgh Railway Company	1903	1912, 1921
Canadian National Railway Company	1908	1923
Canadian Pacific Railway Company	1903	1922
Central of Georgia Railway Company (subsidiary of Illinois Central, with separate plan)	1917	1923
Chicago & Northwestern Railway Company	1901	1919
Chicago, Burlington & Quincy Railroad Company	1922	1926
Chicago, Rock Island & Pacific Railway Company	1910	
Chicago, St. Paul, Minneapolis & Omaha Ry. Co. (subsidiary of Chicago & Northwestern Ry. Co., with separate plan)	1906	
Colorado & Southern Railway Co. (subsidiary of C. B. & Q., with separate plan)	1922	
Delaware & Hudson Company	1908	1910, 1915
Delaware, Lackawanna & Western Railroad Co.	1902	1912
Denver & Rio Grande Western Railroad Co.	1917	1927
Florida East Coast Railway Company	1916	
Fort Worth & Denver City Railway Co. (subsidiary of C. B. & Q., with separate plan)	1922	
Great Northern Railway Company	1916	1920, 1927
Illinois Central Railroad Company	1901	1902-8-9-12-16-17-20
Lake Superior & Ishpeming Railroad Company	1920	
Minneapolis, St. Paul & Sault Ste Marie Railway Co. (subsidiary of Canadian Pacific with separate plan)	1910	
Missouri Pacific Railroad Co.	1917	1926
Nashville, Chattanooga & St. Louis Railway Co. (subsidiary of L. & N., which has no formal plan)	1914	
New York Central Railroad Company	1910	1926
New York, Chicago & St. Louis Railroad Co.	1914	
Norfolk & Western Railway Company	1917	
Northern Pacific Railway Company	1922	
North Western Pacific Railroad Company	1912	1914
Pennsylvania Railroad Company	1900	1920, 1922, 1925
Reading Company	1902	1902, 1911, 1926
Richmond, Fredericksburg & Potomac Railroad Company	1923	
St. Louis & San Francisco Railway Company	1913	1913, 1918
Southern Pacific Company	1903	1906-8-10-12-16-18-22-23-24-25
Spokane, Portland & Seattle Railway Company	1926	
Terminal Railway Association of St. Louis	1920	
Texas Pacific Railway Company (subsidiary of Missouri Pacific, with separate plan)	1925	1927
Union Pacific Railroad Company	1903	

seized for pension purposes. We know that 1.92 per cent is ear-marked now, but actuaries are but human. They refuse to peer too deeply into the future. Conditions are forever changing. As the Merchants Committee of New York said:

"No lucky event ever comes to the rescue of a pension plan."

George King, one of the leading actuaries of Great Britain, said in a Treasury inquiry:

"Actuaries cannot predict with accuracy. The calculations of these eminent gentlemen were altogether stultified and there was a large deficiency in the fund."

But it is recognized that the accrued liability of this system for pensions runs into many millions.

THE "accrued liability" is the pension credit built up by the workers during their years of service.

I am debarred from stating the precise total of the accrued liability for the system in question. Every other railway system, of course, is in precisely the same position, modified by the factors of magnitude and by the age and conditions of the pension fund. Every road, so far as I can ascertain, has held fast to the so-called "discretionary" pension plan.

Put in a nut shell, that means that each road can, if compelled by conditions, reduce the amount of pensions paid, alter the conditions to make the attainment of a pension more difficult, or even scrap the entire plan.

That is the factor of safety for the railroad. It may be asserted vigorously that no railroad will do anything of the sort unless compelled. But it is the merest common sense to point out that no board of directors would commit themselves to the unalterable payment of a pension plan which might, as its curve reached into the future, conceivably eat up every dollar of profit that road might make. No management could properly commit itself to a ruinous drain. Each management must retain the option of trimming its sails to suit the financial wind.

It is precisely that freedom of action which the Interstate Commerce Commission demands that each road surrender in return for the privilege of establishing a sane funding plan.

UNDER the rulings of the I. C. C. the current cost of pensions may be charged against operating expenses. So far as this goes it is acceptable to the railroads. As an authority has stated, "the fact that a substantial proportion of the net income of the railroads must be paid out in taxes makes it imperative that the net income be only stated after recognizing known liabilities."

But the continued payment of pension costs out of operating income is not regarded as economically desirable. It has been shown that the ratio of pension costs to payroll has a tendency to mount steadily. The mount ing continues even in years in which the operating revenue falls off. The ideal method, according to a recognized authority, is to fund the pension indebtedness. If the railroads were permitted to act in accordance with what seems to them the plain facts of the situation this would be done. They would:

First, make an appropriate provision to take up accrued liability on account of past service;

Second, set aside from the revenues as earned, during the life of an employee, a sum representing the amount which, with compound interest, would be sufficient to meet the pension when due.

This is a sufficiently well-known principle. Every man who has taken out a dollar's worth of life insurance has purchased it from a company which operates on that plan.

Let us see how that plan would work if the I. C. C. permitted it to work.

One large system has an accrued pension liability on account of men already retired of $55,000,000. In thirty years it has paid out of revenues for pensions the sum of $65.-000,000. If it had funded its pension plan thirty years ago by setting aside one per cent of its annual payroll it would have paid out $72,000,-000.

This is $7,000,000 more than it has actually paid out, it is true. But—

A backlog of $50,000,000 would have been built up. This would have reduced the net cost of pensions to $22,000,000. More than that—

The present liability for accrued pensions amounting to $55,000,000 would have been completely wiped out. And—

There would be a present saving of more than $3,000,000 each year.

No one, so far as I know, has ever attacked the wisdom of such a funding plan. Every critic of our pension systems, so far as I know, has pointed out the inevitable danger into which the pension paying organizations are running if they continue to pay pensions out of revenue. Various pension plans have been offered, of course, but I do not think that a single responsible critic has ever offered one in which the principle of funding was not approved.

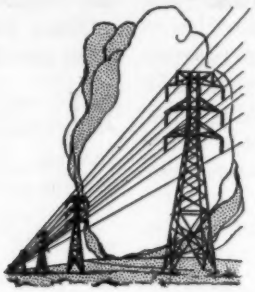
Then why do not the railroads fund?

Because the I. C. C. will only permit that funding on terms which the railroads have utterly rejected. It is reasonably certain that they will continue to reject them. It is more than probable that in time to come the cost of paying pensions out of operating revenues will become so exorbitant that the railroads will make use of their discretionary escape clause.

They will abolish the pension plans. Or they will so alter the conditions that the pensions will be next thing to unattainable. Or they will whittle down the amounts to be paid.

(*Continued on page 334*)

¶ "Every *railroad, so far as I can ascertain, has held fast to the so-called 'discretionary' pension plan. Put in a nut shell, that means that each road can, if compelled by conditions, reduce the amount of pensions paid, alter the conditions to make the attainment of a pension more difficult, or even scrap the entire plan. That is the factor of safety for the railroad.*"



Public Utilities Other than Railroads that Have Pension Plans

THE following list gives 57 public utilities, other than railroads, which maintain formal pension plans. Of these, 51 are noncontributory, 4 are contributory, while in two cases the utilities maintain two systems, one contributory and one not. In these two instances the basic arrangement is an all-inclusive noncontributory pension system, but a contributory plan is also provided for employees who wish to make additional pension provisions.

NONCONTRIBUTORY

	Established	*Amended*
Electric Railways, Heat, Light and Power Companies:		
Adirondack Power & Light Corporation and subsidiaries, Schenectady, N. Y.	1921	
American Electric Power Co. and subsidiaries, New York, N. Y.	1911	
Bangor Hydro-Electric Co., Bangor, Me.	1912	
Boston Consolidated Gas Co., Boston, Mass.	1919	
Boston Elevated Railway, Boston, Mass.	1920	1921, 1922
Brooklyn Edison Co., Inc., Brooklyn, N. Y.	1910	1913, 1921
Brooklyn-Manhattan Transit Corp., Brooklyn, N. Y.	1910	1914
Buffalo General Electric Co., Buffalo, N. Y.	1917	
Commonwealth Edison Co., Chicago, Ill.	1912	1927
Consolidated Gas Co. of New York and subsidiaries, New York, N. Y.	1892	
Consolidated Gas, Electric Light and Power Co. of Baltimore, Md.	1912	1920, 1926
Cumberland County Power & Light Co., and subsidiaries, Portland, Me.	1912	
Des Moines City Railway Co., Des Moines, Iowa	1924	
Duluth Street Railway Co., Duluth, Minn.	1917	
Eastern Massachusetts Street Railway Co., Boston, Mass.	1921	
Edison Electric Illuminating Co. of Boston, Boston, Mass.	1913	
Interborough Rapid Transit Co., New York, N. Y.	1916	
Kansas City Public Service Co., Kansas City, Mo.	1917	
Laclede Gas Light Co., St. Louis, Mo.	1925	
Lehigh Valley Transit Co. and Lehigh Valley Light & Power Co., Allentown, Pa.	1913	
Los Angeles Gas & Electric Corporation, Los Angeles, Calif.	1917	
Louisville Railways Co. & Subsidiaries, Louisville, Ky.	1905	
Middle West Utilities Co. and subsidiaries, Chicago, Ill.	1924	

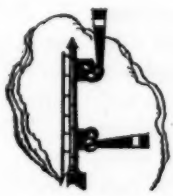
Midland Utilities Co., Chicago, Ill.	1924	
Montreal Light, Heat & Power Co. and subsidiaries, Montreal, Canada	1907	
Nashville Railway & Light Co., Nashville, Tenn.	1917	
National Transit Co., Oil City, Pa.	1927	
Nevada-California Electric Corporation, Denver, Colorado		
New Bedford Gas & Edison Light Co., New Bedford, Mass.	1915	1921
New York Edison Co., New York, N. Y.		
New York Railway Corporation, New York, N. Y.	1902	
Niagara Falls Power Company, Niagara Falls, N. Y.	1911	1919
Northern Indiana Public Service Co., Hammond, Ind.	1925	
Omaha & Council Bluffs Street Railway Co. and subsidiaries, Omaha, Neb.	1916	
Pacific Gas & Electric Co. and subsidiaries, San Francisco	1916	1921
People's Gas Light & Coke Co. and subsidiaries, Chicago, Ill.	1912	1927
Philadelphia Electric Co., Philadelphia, Pa.	1911	
Public Service Co. of Northern Illinois and subsidiaries, Chicago, Ill.	1913	
San Francisco-Oakland Terminal Railways and subsidiaries, Oakland, Cal.	1913	
Southern California Edison Co. and subsidiaries, Los Angeles	1919	
Tenney, Chas. H. & Co., and subsidiaries, Boston, Mass.	1910	
Tonawanda Power Co., North Tonawanda, N. Y.	1912	
Twin City Rapid Transit Co. and three subsidiaries, Minneapolis, Minn.		
Union Street Railway Co. and subsidiaries, New Bedford, Mass.	1910	1923
United Electric Railways Co., Providence, R. I.	1901	
United Railways & Electric Co. and subsidiaries, Baltimore, Md.	1914	
Washington Railway & Electric Co. and subsidiaries, Washington, D. C.	1907	1925
Worcester Gas Light Co., Worcester, Mass.	1916	1923
Cable, Telephone and Telegraph Companies:		
American Telephone & Telegraph Co. and subsidiaries, New York, N. Y.	1913	1914, 1920, 1927
Bell Telephone Co. of Canada, Montreal, Canada	1917	1918, 1921, 1925
Maritime Telegraph & Telephone Co., Ltd., and subsidiaries, Halifax, N. S.	1917	
Western Union Telegraph Co., New York, N. Y.	1913	

CONTRIBUTORY PLANS

Electric Railways, Heat, Light and Power Companies:		
Indianapolis Street Railway Co., Indianapolis, Ind.	1922	
Midway Gas Company, Los Angeles, California	1924	
Puget Sound Power and Light Co., Seattle, Washington	1926	
Southern California Gas Co., Los Angeles, California	1924	

COMPOSITE PLANS

All America Cables, Inc., New York, N. Y.	1919	1926
Radio Corporation of America, New York, N. Y.	1927	



THE conditions imposed by the I. C. C. upon railroads desirous of funding their pension plans are three:

"The ultimate payment of a pension to the worker must be a part of his contract with his employer—provided that the employee has complied with the eligibility requirements of the pension plan.

"Upon the adoption of a funding plan the roads must charge the cost of pensions to employees retired before the plan goes into effect to Profit and Loss.

"That only the cost of funding those placed on pension after the date of entering upon the funding plan may be charged to operating expenses."

THESE conditions seem to me to mean that:

Either the roads must give up the measure of control over their employees which the pension plans now give them or—

They must continue the present unsound and potentially destructive plan of paying pension costs out of revenue.

They are legally free at present to discontinue the pension plans *in toto;* to throw them away, lock, stock, and barrel. The I. C. C. insists that for the privilege of continuing to pension their employees they resign, at least in part, the privilege of running their own railroads. This is not an attempt to present an argument for either side, but it seems obvious that an employee who does not feel that his pension will be endangered if he goes on strike will be much more free to strike when a controversy arises. Neither the railroad management nor the union labor side will challenge that statement.

That the roads will not assent to the first condition may be taken for granted. It is true that employers have referred to pensions as "bounties" or "gratuities." The implication is that the grantors have been moved by humanitarian motives only. In this light a pension is essentially a charity. No doubt many managerial hearts are kind, but in sober truth it may be accepted that pensions are granted because of the control the employer thus secures upon the acts and words of the employee.

THE I. C. C. and the Income Tax Bureau authorities do not permit the cost of pensions to be deducted from operating expenses because they are charities.

They are recognized as a means of promoting the efficiency and the loyalty of the employed force. This is brought out very clearly in almost every pension plan. Pensions may be refused or withdrawn or decreased for acts prejudicial to the interests of the grantor. They are, therefore, being paid out in return for benefits rendered or to come. Some railroads preserve the right to compel their pensioners to act as strikebreakers if called upon, on penalty of voiding the pensions paid.

If the railroads think this measure of control has been worth the millions of dollars paid for it, it hardly seems probable that they will surrender it on call. It would be much simpler to surrender the pension plan.

"The cost of the pensions accrued before the funding plan goes into effect"—rules the I. C. C.—"must be charged to Profit and Loss."

PROFIT and Loss is only another name for the stockholder's pocketbook.

If there is an earned surplus the stockholder gets a dividend. If there is a deficit he may get a receiver. The cost of pensions which might accrue after the funding plan goes into effect might, conceivably, be made up by an increase in operating rates, the weather and the I. C. C. permitting. This is possible. The imagination will stretch sufficiently to visualize it. But if the cost of the already-accrued is to be taken from profit and loss it will come from the pocket of the stockholder.

Mark this:

The men already retired and on pension must be cared for out of the Profit and Loss fund—or the stockholder's pocket—according to this ruling of the I. C. C. And that means every man who is on a pension fund today. One railroad system paid out $6,665,000 last year for current pensions. How many million dollars must be taken from the pockets of the stockholders of that railroad system alone if that ruling were to be accepted? Then think of the other stockholders in the other roads!

THEN the I. C. C. asks that the railroads give up whatever measure of control the pension system now gives them over past and present employees—

And pay for that surrender by turning over a sum which would stagger the first two greatest governments of the world.

Yet the I. C. C. defends its position logically. At its Bureau of Accounts I was told that:

"We only ask that the money which is taken from the pockets of the public and ear-marked for a pension for John Smith shall go to John Smith. Not to any one else."

I can find no quarrel with that. It does seem fair to me that a man who has worked for twenty-four years for one railroad should be given a pension when he retires, if his neighbor who has worked for twenty-five years gets one. But to make him sure of that pension the I. C. C. says that John Smith shall have a contract with the railroad and the railroad says he shall not.

And that's that!

AND likewise, if the stockholders owe John Smith money for his twenty-five years of work they must pay for it out of their own pockets, says the I. C. C., and not take it from the pockets of the public which shall begin riding in this year of our Lord.

That has a convincing sound to me, too. I'm sorry, honestly. But stated that way it seems only fair. Except that the stockholders say they will not pay. If they are bothered too much about this thing, they will tear up the pension plans altogether.

That's that, too.

Years ago the old *Times-Herald* of Chicago printed this pithy editorial one morning:

> "Yesterday the Democrats nominated Mr. Blink for mayor.
>
> "The Republicans have nominated Mr. Bluff.
>
> "The *Times-Herald* takes to the woods."

Why Service-at-Cost Agreements Do Not Stifle Competition

HERE is a shrewd appraisal as well as a clear explanation of this feature of regulation which daily seems to assume more importance. The author's conclusions are favorable to the service-at-cost contract. Mr. Jackson takes issue with Professor Cabot's objection to the service-at-cost contract on the ground that it stifles initiative. He presents some interesting studies of two Massachusetts railways having such contracts that seem to show that these utilities are actually setting the pace rather than keeping up with it with regard to transit development.

BY WALTER JACKSON

THE term "service-at-cost" is one of the most unhappy phrases ever devised. It sounds so altruistic that a lot of explaining is necessary to clear up the fact that most of these agreements grant little except a more flexible fare scale than theretofore.

Under ordinary circumstances, a street railway faced by insufficient revenue is compelled to go through lengthy fare hearings each time with perhaps a costly valuation proceeding thrown in for further expense and delay. By the time the petitioner gets half of the loaf he asked for, the situation has changed materially—and generally for the worse.

Under most of the service-at-cost agreements, the vexed valuation question and rate of return are not subject to such dilatory proceedings. These matters are already in the contract; and provision may also exist for procedure as to additions to valuation and permissible cost of new monies.

Contrary to the general impression, the municipality does not guarantee that the railway will get the permitted rate of return on the agreed valuation. What it generally does is to set up a fare ladder and a fare stabilization fund. The railway is allowed to vary its charges up or down within the range of these fares according to the amount in the stabilization fund.

To date the maximum fare so permitted is 10 cents. No urban transportation operators are thinking seriously of higher fares than that, and most of them realize that the 10-cent fare has to be tempered by special wholesaling rates.

WHAT moves the writer to stress the foregoing facts about service-at-cost agreements at this time is a rather broad statement made by Philip Cabot, Professor of Public Utility Management at Harvard University in his paper on "Competition and Rate Making," before the American Electric Railway Transportation

and Traffic Association's 1929 convention, October 2nd.

In the course of a splendid paper which enunciated the proposition that selling price determines cost rather than the reverse, Professor Cabot adverted to service-at-cost franchises. In his opinion, such franchises tended to stifle progress and initiative.

Now the results of service-at-cost franchises are often so contrary to this assumption, that it may well be asked:

What basis is there for the implication that the service-at-cost operator is sheltered from the storms of economic change?

Of all the service-at-cost agreements known to the writer, the only one that really guarantees something is that of the Boston Elevated Railway. This agreement, effective July 1, 1918, for ten years, empowered trustees *appointed by the state* to charge such fares as would pay the cost of service. By "cost of service" was understood the payment of all operating expenses and rentals, the setting up of proper depreciation and a rate of return to the stockholders of 5 per cent for the first two years, 5½ per cent for the next two years, and 6 per cent for the remaining six years. These were the rates on par value, but the actual rates of return were: 4.74, 5.15, and 5.55 per cent.

Under the Boston Elevated service-at-cost act, the trustees not only had the right to charge any fare they saw fit, but the further right to meet deficits through assessments against the communities served. The inaugural effort to operate with 5-cent, 7-cent, and 8-cent fares in the first year led to a deficit of $5,415,500. Of this amount, $3,980,151 was met by assessments; or, as the British say, by "going upon the rates."

This situation compelled the trustees to go to a straight 10-cent fare July 10, 1919. By December, the revenues were sufficient to meet the cost of service.

Now in this one case where dividends are guaranteed has there been any lack of initiative and enterprise? Let us examine the following evidence before answering.

Although the management was compelled to charge 10 cents to make both ends meet, it was quick to recognize the fact that short-haul riders at lower rates are more profitable than no such riders at all at 10 cents.

As early as 1921, it began to establish short-haul fares wherever feasible. These have been added to year after year until 1929 showed 2,612,980 patrons at 5 cents, 56,272,366, at 6 and 6¼ cents, and 6,371,689 on pupils' 5-cent tickets. It is true that the great majority (288,789,514) still paid 10 cents, but it is also true that only a management with initiative and a sense of public service would have taken the trouble to develop these short-haul fares and the diversity of fare collection plans they require.

Back in 1921, one of the leading car builders was desirous of investigating the motor-bus field. As the writer had already had his right hand in the short-haul fare study, his left hand was available for some preliminary surveys in the motor bus field. The car builder was more than a little dubious about the opinion of most managements on bus applica-

Here Is One Result of a Service-at-Cost Contract:

"If a given district did not earn the cost of service at any practicable rate of fare, the trustees could offer the communities of the district the OPTION of meeting the deficit out of taxes or of losing the service.

"Gloucester lost its rail service in 1920 because of failure to meet this condition; nor was this the only proof that the trustees meant business. One salutary effect was the elimination of jitneys by local action."

tions. Finally, he selected Boston as a proving ground because there he found a management eager to learn the value of a tool then new and almost wholly unknown in American street railway practice. Boston's first bus line began operation in February, 1922. In 1929, it was running some 319 busses in a great diversity of services, including chartered coaches for parties.

To one who knows what it meant to sell the "place of the bus" to electric railway men in 1921, this seems to come under the head of initiative.

But perhaps the greatest achievement in connection with an ever-extending rapid transit system was the change from "dinky" single cars to 2 and 3-car train operation. Those not acquainted with "the Hub" may be reminded that the surface cars going downtown usually enter long and costly subways. The rentals of these city-owned subways would have been modest for New York subway train lengths and headways, but they were back-breaking for tramcars run individually.

In 1929, "rent of subways, tunnels, and rapid transit lines" took .748 cent of the 9.6 cents average fare. It can, therefore, be appreciated what it has meant to be able to replace 34-seat single units with 48 and 62-seat cars in trains. The average age of the 25-foot cars in 1918 was seventeen and two-tenths years! Under the trustee regime, there has been a complete elimination of the inherited junk. More than 1,300 steel cars have replaced 1,476 smaller vehicles. It would be a mighty fine thing if some cities without an agreement of the Boston type could do likewise.

The Boston management has not only pioneered in short-haul fares, busses, and modern electric cars, but has been equally advanced in the education of personnel. Its schools have been a model for many others. As for efficiency: A smaller number of men are turning out more and better car miles than in 1917.

Last and not least—by the end of 1929, the tax assessments had been paid back, except for $1,349,333 out of the original $3,980,151.

THE Boston Elevated Railway was singled out for the foregoing discussion to prove that even a true guarantee need not extinguish initiative and progressiveness. A shorter

glance will now be taken at another service-at-cost undertaking in Massachusetts.

This is the Eastern Massachusetts Street Railway, whose reorganization under state trustees was synchronous with that of Boston. The Eastern Massachusetts trustees were empowered to charge self-sustaining fares. If a given district did not earn the cost of service at any practicable rates of fare, the trustees could offer the communities of the district the *option* of meeting the deficit out of taxes or of losing the service.

Gloucester lost its rail service in 1920 because of failure to meet this condition; nor was this the only proof that the trustees meant business. One salutary effect was the elimination of jitneys by local action.

Like Boston, the Eastern Massachusetts trustees inherited a mass of obsolete equipment. Worse yet, there were hundreds of miles of track which were perfectly hopeless from a revenue standpoint because of lack of population or the coming of the personal automobile. Immediate amputation of the gangrenous members was necessary if the patient was to remain alive.

What has been the result of a contract which gave the management this freedom in subdividing the property into fare districts and in lopping off the sick limbs?

In the period 1921–1929 the operating revenue dropped from $11,318,-264 to $8,579,451 due to the automobile, long and severe depressions in the chief industries of the territory (textiles, shoes, and so forth), and other causes. Yet through the introduction of modern one-man car operation and most intensive adjustment of service, the operating expenses were cut so sharply that in the eleven years from January 1, 1919, to December 31, 1929, it was possible to meet all operating expenses and interest charges, spend some $7,000,-000 for roadway and equipment including hundreds of *de luxe* cars, retire $10,577,150 in bonds and other securities and pay dividends of $6,-436,725.

The management is not content to secure more revenue from *less* customers. The unlimited-ride weekly pass has been installed at Brockton, Lowell, Haverhill, and Lawrence, in addition to the earlier one-day, system-wide passes, which permit the bearer to ride over its far-flung system at will.

In addition to its first-rate work with *de luxe* cars, the Eastern Massachusetts Street Railway also operates a great variety of motor-bus services, both city and cross-country. It can hardly be said that initiative is lacking here.

ALTHOUGH Professor Cabot may have given the impression that the service-at-cost operator is protected against competition in some way, the fact is that the greater part of his paper is devoted to proving that the electric railway and busway has all kinds of competition. Such competition is a far more effective regulator of fares than any *ukase* of Public Service Commission or service-at-cost agreement. Paradoxically enough, the service-at-cost operator with a sliding scale of fares is the only one who has some degree of the freedom Professor Cabot suggests. Of course, this greater freedom in maneuvering

What a Service-at-Cost Contract Includes:

A SERVICE-AT-COST *contract does* NOT *usually mean that the utility is guaranteed a specified return on an agreed valuation. Boston is apparently the only city extending such a guarantee.*

What the service-at-cost contract DOES *usually do is to set up a fare ladder and a fare stabilization fund. The utility is then allowed to vary its charges up or down the ladder according to the amount in the stabilization fund.*

against the competitor does not mean that the enemy can be held harmless.

As pointed out by Hudson R. Biery, director of public relations, Cincinnati Street Railway, in discussing Professor Cabot's paper, there is *competition by substitution,* even if the service-at-cost agreement does shut off jitneys or other rival operators of mass transportation. No agreement in the world can prevent a man from using his personal car instead of bus or trolley. It is one thing to give the company any desired scale of fares; it is another to get the public to pay it. The ride *via* public carrier has now become a dispensable article. It is worth just as much as the prospect thinks—and no more.

As the writer pointed out in the same discussion, competition by substitution is not the only kind. There is the more subtle competition of the radio which keeps the family at home; of the telephone which can be used in place of face-to-face shopping or visiting; and of the grocery or meat store on wheels that rolls right up to the customer. This is the competition of industry versus industry which intensifies the competition within the industry.

So if we go down the line to look over service-at-cost properties which have even less power than the Eastern Massachusetts trustees to assure the necessary wage for capital, we will find that these internal and external forms of competition are being recognized more and more as the most effective regulators of fares.

TAKE the Youngstown Municipal (privately-owned) Railway, for example. It has worked under a great variety of fares, but has come to the conclusion that present conditions call not only for a fare schedule differentiated according to use of the service, but also for more comfortable cars and for greater accessibility to its service. Therefore, we find its 10-cent cash fare tempered by an 8⅓-cent token and $1.50 unlimited-ride weekly pass; its rolling stock replaced in part by smoother-running, leather-seated, beautifully illuminated cars; and its car routes supplemented by a large number of motor-bus routes. Whether or not the management is progressive, may be judged from the fact that both in 1926 and 1930 it was awarded the annual Coffin medal and $1,000 by the American Electric Railway Asso-

ciation for most conspicuous service to the industry.

The like award was made to the Pittsburgh Railways in 1925, which is also under an agreement limiting its rate of return on an agreed capitalization. No other city company in the country has made such an effort to build up business and popularize the service through diversity in fares based upon frequency of use (passes), length of ride, and character of service. Its special-fare coach service operated by a subsidiary company marked a new era in city transportation through going after the "auto-softened" individual who will use only a "class" vehicle in place of his own motor car. At this very day, truly revolutionary work in high-acceleration, lightweight cars gives promise of passing on to the industry another important aid in the struggle with "roll your own" transportation. There seems to be no lack of initiative here.

IF we pass on to Cincinnati, we find a similar program nearing fulfilment. It is apparent from the patronage of the company that these efforts to modernize the service have not gone unnoticed. The only recent changes in fares have been downward. Late in 1925, the 10-cent fare was ameliorated by an 8⅓-cent token. In November, 1926, the service was further popularized by adding a 25-cent Sunday pass. Notable in this city has been the co-operation of municipal officials in helping to place all the service in the hands of one competent concern, whether for car or bus operation. Early this year, interests affiliated with the Cincinnati Street Railway also acquired a share in a local taxicab company. All of this may be said to come under the head of "initiative."

TOLEDO is one more example of service-at-cost undertakings that lead in giving modernized service for the money. The original service-at-cost agreement did not protect the railway against the competition of jitneys. The altered agreement of July, 1928, did grant this protection. As a consequence, the Community Traction Company was enabled to embark on a most amazing expansion of its service, speeding up its rail lines with remotored cars and developing motor bus operations to an unheard degree of usefulness.

Perhaps, Alexander Pope was right after all when he wrote:

> "For modes of government let fools contest;
> "Whate'er is best administered is best."

Those of us who know the Cleveland Railway, pioneer in the service-at-cost field, are aware it is doing a splendid transportation job with top-notch equipment. Take a look at its maintenance buildings, its track construction, its early attention to speedy cars, and its low fares. Service-at-cost has not impaired the wakefulness of its management. It can tell an automobile from a buggy; and realizes its influence on the public carrier.

ELECTRIC light is being made an integral part of modern commercial structures, the architects using it as a means of supplementing and enhancing other elements in design and decoration.—DEPARTMENT OF COMMERCE.

Remarkable Remarks

MARTIN J. INSULL
President, Middle West Utilities Company.

"There cannot be a trust in a regulated industry."

JOHN M. FITZGERALD
Railroad man.

"Every railway executive, officer, and employee must be a self-constituted public relations agent."

T. J. SMITH
Editor, "So The People May Know."

"There are many fair-minded and just men with the utilities but they are not in the lead."

DR. LEE DE FOREST
Scientist and inventor.

"Unless the evil (of broadcasting advertising) is voluntarily cured we are headed straight for government regulation."

FRED W. HERBERT
Magazine columnist.

"There must have been automobiles in biblical times for the good book says 'Elijah ascended to Heaven on high.'"

P. S. ARKWRIGHT
President, Georgia Power Company.

"If (electric) rates are forced too low, the South will suffer immeasurably greater damage than the power companies."

SAMUEL UNTERMEYER
New York attorney.

"I would compel any corporation engaging in interstate commerce to get a license from the Federal Trade Commission before engaging in business."

COL. WM. J. DONOVAN
Former Assistant Attorney General.

"The Federal Trade Commission should be changed from its present form of investigator, prosecutor, and judge to a body with *quasi*-judicial powers."

WILLIAM ATHERTON DU PUY
Writer and economist.

"The Post Office has an ironclad monopoly. If you are going to New York and your wife gives you a letter to hand to her sister, you are breaking the law."

C. M. RIPLEY
General Electric Company.

"There are about 19 million more horsepower of electric motors to be installed in our *present* factories before they are all electric drive."

EDWARD N. HURLEY
War-time Chairman, U. S. Shipping Board

"If a referendum were taken tomorrow on the question of turning over their electrical service to political agencies, there is no doubt that the majority for the present system would be overwhelming."

JOHN T. FLYNN
Magazine writer.

"Senator Reed of Pennsylvania once said openly that if he had his way he would wipe out the Sherman Law, the Interstate Commerce Commission, and the Federal Trade Commission to-morrow."

ARTHUR BRISBANE
Editorial writer for the Hearst newspapers, (in reference to the Texas-Chicago natural gas pipe line).

"Some Chicago anarchist will probably suggest that since God Almighty made the gas, and the company has nothing to do but let it run through a pipe, it seems hardly necessary to make an extra charge once the pipe is paid for."

GIFFORD PINCHOT
Candidate for Governor of Pennsylvania.

"I am a candidate for Governor. I want to help to break the strangle-hold of the electric, gas, water, trolley, bus, and other monopolies on the cost of living and the government of this state. The fight for common justice against machines and monopolies is the kind of a fight I like."

FRANKLIN D. ROOSEVELT
Governor of New York.

"We must not be led by what I hope will be the successful course of these particular negotiations to slacken our efforts to prevent by legislation improper and unnecessary appeals to the courts, and particularly to the Federal authorities, by those unwilling or unable to comprehend the spirit of the times."

LOUIS WALDMAN
Socialist Candidate for Governor of New York.

"The struggle for low rates to the domestic consumers as well as to the industrial and commercial users will continue until the public learns the simple lesson that electricity, being a common necessity, ought to be owned and distributed by public agencies for the sole benefit of the public."

NORMAN THOMAS
Socialist.

"Where we have had a chance at government operation the results have been more successful than commonly supposed. Government operation of railroads under very unfortunate limitations during the war succeeded when private operation failed. The propaganda to the contrary, in so far as it doesn't arise from deliberate misrepresentation, arises from the fact that the government wisely preferred to pay a deficit out of taxes rather than to accelerate rising prices by raising rates. The Interstate Commerce Commission did raise rates for the private operators after the war."

Is a Broadcasting Station a Public Utility?

Radio broadcasting began about nine years ago; since its advent, controversy has raged as to how it should be classified and regulated. The question has yet to be settled by law.

By ROBERT D. HEINL

THE question whether a radio broadcasting corporation should or should not be classified as a public utility is one that has disturbed Congressmen, radio commissioners, and lawyers for several years.

As yet, this problem is unsettled either by law or court ruling, but it is likely that the next radio act, (which is being drafted by the Senate Committee on Interstate Commerce), will settle the controversy—at least so far as the law is concerned. If the courts should later hold otherwise, the issue would be just about where it is now.

Authoritative opinion at present is pretty well divided. The belief that radio broadcasting should come under public utility classification is largely limited to members of Congress and at least one radio commissioner, while leaders in the industry, together with their legal counsel, think otherwise.

For the purpose of giving the views held by some of the principals of both camps, I have solicited the opinions of a federal radio commissioner, several Senators, a Representative, the president of one of the large broadcasting chains, and several others in the industry.

ONE of the first advocates of the public utility theory was Judge Ira E. Robinson, of West Virginia, former chairman of the Federal Radio Commission.

However, I turned to him reluctantly for an expression, because, to the best of my knowledge, the Judge has spoken for publication just one time in the more than two years he has been on the Radio Commission.

I was surprised, then, with the readiness with which he discussed the subject.

"Is a radio broadcasting corporation a public utility?" Judge Robin-

son replied, repeating the question put to him. "Assuredly so. What else could it be, out of its natural relation to life and the character of license granted to it by the public? Whether you look at it from the listening end or the transmitting end, it is concededly a public utility. And in legal concept, taking many considerations into the analysis, a broadcasting station is a public utility at the transmitting end, for the use of the public.

"The licensee is only a trustee for the public. He can be given no right by the license to say who shall speak and who shall not. The Constitution has an inhibition against restriction of the freedom of speech. Congress even has not the power to provide for me a license to talk only my own doctrines or those that suit my notions.

"A wonderful evolution along this line will be observed as the years go by. Cases are arising which will bring the question to the forefront. For instance, only the other day, WBZ, at Springfield, Massachusetts, controlled the air in behalf of prohibition, denying the opposite side any answer. The ordinary legal remedies are available. Naturally, in time, resort will be made to them.

"It seems that every time the broadcasters have a meeting, they resolve that their stations are not public utilities. The wish is merely father to the thought. They can no more change their status that way than I can change my color by a resolution to be black. Broadcasting stations in the great Eternal Fitness of Things are just what they were meant to be—an opportunity for long range speech, the freedom of which is guaranteed to every citizen.

"Here let me quote President Hoover, who, with his great wisdom and foresight, said before the House Committee in 1926:

> "'We cannot allow any single person or group to place themselves in position where they can censor the material which shall be broadcasted to the public. . . . Radio communication is not to be considered as merely a business carried on for private gain, for private advertisement, or for entertainment of the curious. It is a public concern impressed with the public trust and to be considered primarily from the standpoint of public interest to the same extent and upon the basis of the same general principles as our public utilities.'"

REPRESENTATIVE E. L. Davis, of Tennessee, author of the much discussed Davis amendment to the radio law of 1927, cited this same utterance of the President, made while he was Secretary of Commerce and in charge of radio, in expressing his views that a broadcasting corporation is a public utility.

SENATOR Burton K. Wheeler, of Montana, limited his definition with a *"quasi."* That is, he believes that a broadcasting company is a public utility of a different kind from the telephone or street car organizations because it does not charge listeners for programs but derives its income from advertisers.

In all recent legislation affecting radio, Senator Wheeler has taken a prominent rôle. He is a member of the Senate Committee on Interstate Commerce.

A DIFFERENT position is taken by Senator C. C. Dill, of Washington, co-author of the last radio bill, though he states that he is in favor of changing the law so that at least radio communication companies will be put in the public utility category.

"The radio law does not make radio broadcasting corporations public utilities although the Couzens bill so provides," he said; "I think all radio communication service companies should be declared public utili-

ties, but I have always had some doubt about the wisdom of making radio broadcasting a public utility.

"I do not thing it can be said that radio broadcasting is or is not a public utility as the law now reads. I realize this may seem to be dodging the question, but I think you will find the courts will so declare, if the question is presented to them under the present statute.

"Let me add that I fully approve the action of the Radio Commission in requiring communication companies to be public utilities, in order to get a license, except in special cases where radio is the only possible method of communication and there is no public business as such."

THE same question is taken by Judge E. O. Sykes, vice chairman of the Radio Commission, and frequently have he and Judge Robinson clashed in friendly controversy over the issue.

That the counsel of the Radio Commission holds the same view was brought out recently in a document covering state and municipal regulation of radio prepared by Paul D. P. Spearman, assistant general counsel, and Paul M. Segal, a former assistant in the same division.

"Neither the Federal Radio Commission nor the Radio Act of 1927, as amended, places a broadcast station in the classification of a public utility from the standpoint that the station is compelled to sell time on the air to any and all persons desiring to purchase it for any and all purposes and any and all types of use. Such a requirement would carry within it the germs of the destruction of the American system of broadcasting.

"The attempted imposition by states upon broadcasting stations of a standard different from that of Federal law is invalid."

WHEN one comes to the industry itself, he finds practically a unanimous belief that a radio broadcasting corporation is not a public utility and that it would be detrimental to the progress of radio to have such an interpretation put into law.

M. H. Aylesworth, president of the National Broadcasting Company, recently stated in testimony before the Senate Committee on Interstate Commerce during the hearings on the Couzens bill:

"I regard radio broadcasting as a public service, subject to regulation as such, but not as a public utility. It is not a monopoly. It is not a primary necessity and it is not paid for directly by the public.

"The latter fact especially distinguishes it from point-to-point communication by radio for toll, which beyond doubt is a public utility. Radio broadcasting prospers solely by giving acceptable service and receiving in return good will."

SOMEWHAT the same attitude is taken by Henry A. Bellows, former radio commissioner and now president of the Northwestern Broadcasting Company, Inc., of Minneapolis.

Defining first his terms, Mr. Bellows says:

"On this point the first thing to be decided is: What is a public utility? The answer in the past has always been that it is a partial or complete monopoly which operates by virtue of a public franchise and in return for this franchise concedes the right of the government to regulate the rates which it charges to consumers. This is true of the railroads, trade railways, light and power companies, and privately owned water companies.

Is Broadcasting a Utility Service?

YES: *"Whether you look at radio broadcasting from the listening end or the transmitting end, it is concededly a public utility."*

—JUDGE IRA E. ROBINSON
FORMER CHAIRMAN, FEDERAL RADIO COMMISSION

NO: *"I regard radio broadcasting as a public service, subject to regulation as such, but not as a public utility. It is not a monopoly. It is not a primary necessity, and it is not paid for directly by the public."*

—MERLIN H. AYLESWORTH
PRESIDENT, NATIONAL BROADCASTING COMPANY

"My contention has always been that a broadcasting station could not be classed as a public utility because it makes no charge to the consumer. I readily admit that it has certain definite public obligations, but I do not see how it can possibly be classed as a public utility in the usual sense unless it has rates to the consumer which can be regulated."

CONTENDING that one of the obstacles in applying the term public utility to a radio broadcasting corporation is that the latter is not a monopoly in the true sense, Thomas P. Littlepage, attorney on radio law and counsel for Station WBBM, Chicago, and Station WFBM, Indianapolis, declares that such a monopoly would not even be desirable.

"To undertake to apply the theory of utilities to radio would be to cramp the individuality of the owners of broadcasting stations," he said, "without, in turn, giving them any guarantee of remuneration or return on their investment.

"There is no commission in the world that could be appointed that would have the capacity to make the necessary regulations for successful radio, for the simple reason that regulations would have to be uniform all over the country and when it came to the question of fixing prices and rules for the governing of advertising it would be an impossible task. There are, no doubt, many rules and regulations in store for radio, but of necessity they will have to be rules as to what a broadcasting station cannot do, rather than what it can do.

"Furthermore, radio does not have the power to force itself on the listener and whoever runs a radio station, be it a corporation or otherwise, must please the public, or the station will have to go out of business. If a utility company, for example, desires to create good will for their property they will have to create it by pleasing the public and if they are doing that they are doing a service. The minute they begin to talk their own wares too much they become monotonous and unpopular and do themselves more harm than they can do good.

"It is possible that it may become desirable to require all corporations, other than broadcasting corporations, that own radio stations to incorporate a separate company entirely for broadcasting. The benefit of this would be that it would put the responsibility for the proper operation

of the station upon a company that was the direct licensee and would, therefore, be under the control of the Federal Radio Commission."

SENATOR Smith W. Brookhart, of Iowa, also a member of the Senate Interstate Commerce Committee, holds with his colleague, Senator Dill, that the law today does not place radio broadcasters in the public utility class. He has gone so far, in fact, as to introduce a bill which would prohibit public utilities, as such, from engaging in broadcasting. Of course, if such a measure went through with a definition of broadcasting corporations as utilities, which is impossible, there would obviously be no radio programs.

SUMMING up the contentions of the leading proponents and opponents of the public utility theory in relation to broadcasting, one would be forced to call the debate a draw with the odds, perhaps, on the latter.

Often, there is a confusion between radio broadcasting and radio communication. The second is certainly a public utility in that it operates similarly to telegraph companies.

Whether it would be desirable to have a radio law define broadcasting corporations as utilities is likewise debatable. It might lead to the regulation of advertising rates charged by various stations and might compel them to open their studios to undesirable advertisers.

It would be virtually impossible for the commission to select programs for the stations and such selection would certainly be undesirable.

So even the advantages of classifying broadcasting stations as utilities are dubious. The effect of the Couzens bill definition, if adopted, will depend upon how much power it allows the communication commission in the matter of regulation.

WHAT, then, can be regulated, in the event that the radio is legislatively and judicially classed as a public utility? Regulation of radio has three possible aspects: the censoring of programs, the supervision of technical operations, and the regulation of rates for broadcasting service.

The matter of censorship, in turn, can be divided into three parts: censorship from the standpoint of entertainment value, censorship from a standpoint of public morals, and censorship from the standpoint of public policy.

Now, that the matter is ruled off like a map, what agency will exercise these respective powers?

CENSORSHIP for the purpose of maintaining a standard of entertainment must rest with the station. The very life of a broadcasting public depends on satisfying unseen customers who never pay a cent for the service. There is no better reason for barring programs from the air than the fact that they are dull. The operators must be given a wide discretion in this no matter what else the lawmakers decide to regulate. To compel a station to accept stupid programs and ruin its own prestige would be a clear invasion of the constitutional rights of the broadcaster.

On the other hand, censorship for moral purposes must be left to the state. Of course, these three aspects

of censorship are not watertight compartments. They are closely interrelated. A program so salacious as to be offensive might also be poor entertainment in the sense that any entertainment is poor which offends its audience. And so, in the absence of action by the state, the stations should have the right to refuse programs offensive to public taste—not as an exercise of moral censorship (for that would make the broadcaster the arbiter of community morals) but simply as an exercise of the first kind of censorship—maintaining a standard of entertainment. Profanity, obscenity, and vulgarity fall under the head of moral censorship—sometimes called "police censorship."

THE final class of censorship is most troublesome. The best explanation of it would be a true instance. Last April, the Civic Defense League, an organization fighting the chain stores, entered into a contract with station WHEC, Rochester, N. Y., to give thirteen addresses. After three of these talks, however, by Walter F. Cherry, a young Rochester attorney speaking for the league, the manager of the station refused to let Mr. Cherry go on the air again until the lectures were first approved by the broadcasters. It seems that Mr. Cherry had said something, neither immoral nor dull, but yet, in the opinion of the station's manager, offensive to certain business interests. Mr. Cherry has sued WHEC for breach of contract, but the case raises the question of whether the station or the state should be permitted to censor on grounds of public policy.

HOW about the second type of regulation — the regulation operating conditions?

It is clear that the government should, in the interest of the public, even though radio is never declared a public utility, supervise the award of broadcasting rights and control the strength, location, and wave lengths used by the stations. To a great extent, this has already been done by the Federal Radio Commission.

Regarding the final question of rate regulation, it is very improbable that, even should the radio be labeled a public utility, any governmental restriction on the prices charged for broadcasting time will be attempted except merely to prevent discrimination as between customers. At present, there is no need of it and the time when there will ever be any need for it seems a long way off. If the day should come, however, the rates will probably be based on the value of the broadcasting property just as the rates of other public utilities are regulated.

When the Utilities Face the Federal Bar

THE criticism directed at the United States courts for "interfering" with regulations has become a political factor. In the next issue of PUBLIC UTILITIES FORTNIGHTLY *will appear a detailed, authoritative summary of the Supreme Court decisions in utility cases since 1915.*

Across the Third Rail

No. 7: Heroes of the Armies of Industry

A true incident in the life of a public utility employee that illustrates the value of the accident-prevention training that has become a part of the public-relations program.

By ARMSTRONG PERRY

Where the tracks of the Chicago, Aurora & Elgin Railroad parallel the Fox River near Batavia, the power rails are not protected because they are entirely on a private right of way. They carry direct current at six hundred volts.

One day in May, Frank Cada and his chum, Frank Koznik, started to cross these tracks. The Fox River at this point was a favorite fishing ground. They had camped on the bank all night. The morning was dark and cloudy. Rain had soaked the ground, the shrubbery, and the boys.

The fish were biting freely, as they often do under such conditions. The boys had used all their bait. They needed some more live minnows from a creek on the other side of the tracks.

The two boys, seventeen years old, knew the danger of the third rail. Cada was a junior clerk in the Mails and Information Division of the Commonwealth Edison Company, Chicago. This company had a well developed system of instruction in accident prevention, life saving, and first-aid. Every group at work in the organization had at least one man or woman in it who was specially trained in these subjects.

Cada was a Boy Scout also. In his Troop, No. 285, Chicago, he had practised first aid under expert leadership. He was qualified to take part in demonstrations and competition such as are conducted by many of the Scout organizations.

Knowing that the water-soaked ground, their drenched clothing, and dripping feet would make contact with a power rail still more dangerous, Cada crossed the tracks even more carefully than usual, setting a good example for his companion who followed a little distance behind him.

Cada cleared the tracks and started down the bank toward the creek. Suddenly he became conscious that Koznik was no longer near him.

Like seasickness, the consciousness of serious trouble often starts with a vague, undefined fear that rapidly affects the vital organs. Even before he clearly sensed the situation, Cada felt that chill, stony grip on his heart and that sinking sensation in the region of the solar plexus that is so well remembered by all who suddenly have been confronted by great danger.

Two things were forced upon Cada's consciousness as he turned and looked back. Koznik was lying with his legs across the nearest of the two third rails. His feet extended onto the running rail.

The two third rails, serving respectively the south-bound and the north-bound trains, were between the two tracks. The distance between these two power rails, according to the engineers' figures, was fifty-two inches. Koznik's head and arms, as he lay with his legs on one power rail, were so near the other that contact seemed imminent.

An express train had just rounded a curve about a quarter of a mile away and was rushing toward the unconscious boy at sixty miles an hour or more.

A PERSON who has formed no habits of thought or action that apply to such a crisis is likely to be helpless when it arrives.

Cada, however, became fully conscious of the extreme danger the instant that he glanced around. He knew that he would probably be killed instantly if he touched his friend's body with his wet hands. He needed dry cloth, dry paper or something else that would insulate him from the electric current, but nothing of the kind was in sight.

His eyes, however, caught sight of a wooden barrier a short distance away, erected to prevent materials from rolling down the embankment. The idea of using a board in making the rescue came to him at the instant. He ran to the barrier and began tearing away at the boards with his bare hands.

THE train already had covered half the distance to the spot where Koznik lay with his feet and legs, already terribly burned, in the path of the grinding wheels and the contact shoe that slid along the power rail. But even in his frantic haste, Cada took a second to look for a dry board. If he could find one board that was drier than the others, that would increase his chance of removing Koznik from the rails. The boards were all alike, however—all very damp.

Cada had crossed both tracks to reach the barrier. He now had to recross one of them, leaping the power rail. He must stop short of the other third rail and push Koznik off that without placing him on the running rail or in contact with either power rail.

The train was now almost upon them and the chance of success seemed about one in a thousand. The motorman had shut off the power and applied the brakes but there was no possibility of checking the speed of the train in time. The conductor, too, was on the front end, but powerless to help.

They saw Cada lunge and heave with the board from the barrier, then the train reached the spot and the lads passed from view.

AS soon as the train could be stopped, the crew went back to inspect the bodies. They found the boys between the two third rails. Cada was on his knees astride Koznik, applying the prone pressure method to produce artificial respiration. In spite of the shock, he was not working excitedly as would have been natural un-

der such conditions. He was keeping up the slow, steady rhythm taught by the textbooks and the instructors.

The crew offered to relieve Cada. He refused to be relieved, for he had confidence in his method and in himself.

In five or six minutes Koznik drew a breath unaided. Soon he was breathing regularly. They carried him into the rear car. He stopped breathing. Cada laid him on the floor in the aisle and started artificial respiration again.

The train started back toward Batavia. Cada watched Koznik closely, starting prone pressure as often as natural breathing stopped.

From the station they took Koznik to the hospital in Geneva. Efficient treatment restored him so rapidly that he was able to leave in seven days.

THE boys discussed the accident to find out what each could remember. For Koznik it had been a painless experience except for the recovery. He could not remember touching the third rail or falling. Something had seemed to touch him and he had fallen asleep. The next thing that he could remember was going up in the elevator at the hospital, surrounded by white uniformed doctors and nurses.

Cada admits that it was a close shave but does not recall anything heroic. He says that he saw Koznik on the track and the train coming; remembered that it was unsafe to touch a person in contact with a charged electrical conductor; looked for a dry board; took a damp one because they were all damp; and pushed Koznik off the track. It was all very simple, and there was nothing to make a fuss over!

Others, however, have made a good deal of "fuss" over the rescue. Uncle Dan Beard, the grand old man of the Boy Scout movement, discussed the matter with his committee and the organization awarded an Honor Medal to Cada. The National Electric Light Association investigated, and Cada received one of the Insull Medals. The case was brought to the attention of the Carnegie Hero Fund officials, where it is now under consideration.

THE age of heroes seems to be passing. Mr. Samuel Insull endowed the Insull Medals years ago, but only three members of his own organization received it, including Cada. That accident was not due to anything that happened in connection with his work for the Commonwealth Edison Company.

The instruction in accident prevention and first aid received by the employees of that company has reduced the number of accidents to an almost negligible figure. There were but eight life-saving cases among the many thousands of employees on duty last year, and in none of these did the rescuer have to endanger his own life.

The public good will that has resulted from the preparedness of employees who, like Cada, are ready to handle emergencies while on or off duty, is recognized as one of the most valuable assets of the company.

This "safety first" business is going so far that if it were not for automobile smashes and the movies things would be as dull as Little America after Byrd left.

OUT OF THE MAIL BAG

The Intrusion of Regulatory Authority into Management

In your issue of July 10, 1930, page 41, appears a summary under the caption "What Others Think" of various recent views regarding public utility regulation. The ideas attributed to me therein I do not think are correct interpretations of what I had to say at the time of the legislative inquiry into the workings of the New York State Public Service Commission's Law. The opinion said to be held by me is certainly very different from that which I have consistently maintained.

I do not believe, and never intended to say, that regulation is useless. Neither do I wish to be classed with the "old school" utility men who twenty-five years ago did, as your comment states, bitterly oppose all forms of state regulation. I acquiesce in the idea that regulation is necessary along the lines farsightedly laid down by Charles E. Hughes, now Justice of the United States Supreme Court, at the time when he was first Governor of New York state.

My whole point is that regulatory authorities have in large measure departed from these lines, with their emphasis on service and rates, to thrust themselves into questions of management, and particularly financial management, with which regulatory Commissions have no proper concern, and which possess only a remote bearing, if any, on what should be the primary objective of regulation, —good service at fair rates.

The courts have repeatedly warned the Commissions that regulation is a function to be kept entirely distinct from management. Nevertheless, too many Commissions have yielded to the temptation, always present before a governmental agency, to extend their own authority by taking to themselves more and more of the powers that, in the public interest, can be exercised far more effectively by those responsible for the operating and financial policies of the public service corporations. The tendency of recent legislation to increase Commission authority over holding corporations and over the issue of securities is an illustration of what I mean. Corporate and capital structure have little or nothing to do with rates and service, yet Commissions will insist on concerning themselves with these matters to the neglect of the vital part of their real work. It is not regulation that I believe is useless but the attempt to extend regulation into fields where it cannot accomplish any good purpose.

In my testimony before the New York Legislative Commission I referred, though apparently without very much effect, to the example of Pennsylvania whose Public Service Commission's Law, perhaps more than that of any other state, has been drafted and administered with nice regard for the distinction between regulation and management. Pennsylvania does not attempt to substitute the judgment of its Public Service Commissioners for that of public utility financiers as to the kind and amount of securities that should be issued by public utility corporations, and the Pennsylvania Commission concentrates on its proper function of seeing to it that good service is maintained at reasonable rates. As a result there is little or no evidence of public dissatisfaction with public utility service or rates in Pennsylvania and the securities of Pennsylvania public utility corporations are generally regarded as among the soundest in the country. The 4½ per cent First Mortgage Bonds due 1967 of the Duquesne Light Company are considered second to no first mortgage public utility bond of any description; and there are dozens of other issues that could be cited in further illustration of my contention that securities put out by corporations domiciled in states which do not require Commission authority for such issues may be appraised by the market, which is, after all, the court of last resort, as even stronger than those securities which are supposed to have been issued only under rigorous restrictions and after meticulous investigation by some regulatory body.

Please do not quote me again, however, as opposed to all regulation of public utilities. What I am opposed to is simply the long step toward government operation that is taken when Commissions go beyond their proper function of safeguarding the public against clear cases of abuse, and attempt to usurp the powers that definitely belong with the responsibilities of management.

—H. C. Hopson.
Vice President and Treasurer, Associated Gas and Electric Company.

The Future of the Municipal Plant

SINCE going over the several articles in the June 12th issue, I feel that you would have been well justified to make the cover gold instead of silver!

First, the article "The Municipal Plant: Is It Coming or Going?" by Dr. Ralph L. Dewey, is the most comprehensive and sanest statement of the case that I have read up to date—including my own effusion before the City Managers' Association last November. It is a clear, compact, and unprejudiced description and discussion. I shall take delight to refer to the article in the near future.

I agree virtually 100 per cent with Dr. Dewey. I would be inclined to add only this point with respect to future forces and tendencies—that there will probably be in many instances distinct advantages in municipalities owning and operating the distribution system, while purchasing power from a privately operated, generating and transmission system. The advantages in municipal distribution probably appear in the co-ordination between plant activities and other municipal departments. With respect to distribution, moreover, there is a greater tendency to pile on overheads by private companies, than in the generation and distribution. . . .

I agree, of course, with Father Ryan's article. I do not see how the Interstate Commerce Commission can ever regulate the railroads, or how any Commission can ever regulate any utility and do the job without incessant dispute or litigation, unless there is a fixed rate base. This, it seems to me, is rather obviously the fundamental prerequisite of any satisfactory system of regulation. When this has been established, then the Commissions will be in a position to begin to do their real job in constructive regulation, —which, in my mind, would be merely broad co-operation and co-ordination with the utilities.

—DR. JOHN BAUER
Director, The American Public Utilities Bureau

A Page from the Political Economist's Primer

QUESTION: What's behind all this talk about the "breakdown" of Commission regulation, the Supreme Court rate base doctrine and the "power trust?"

ANSWER: Politics.

QUESTION: How does politics enter into such matters?

ANSWER: The politicians say that electric rates are extortionate, and that the Commissions and the Supreme Court are to blame for it. The politicians want to reduce rates.

QUESTION: What sort of rates?

ANSWER: Domestic rates, of course. The politicians are always interested in the plain people; the plain people have the votes.

QUESTION: Is that what all of these costly investigations are for?

ANSWER: Yes; they all arise out of a difference of opinion as to the reasonableness of rates.

QUESTION: Well, how much does this utility service cost the plain people?

ANSWER: On the average the daily cost to a family is less than the price of a good cigar.

QUESTION: Are the people of the country going to get excited politically over that?

ANSWER: Only the son of a seventh son can tell!

What Others Think

The Inarticulate Utilities Are Now Charged With the "Sin of Silence"

IT has long been the custom of trial judges in summing up evidence introduced by opposing litigants to refer to their respective completed story or version as "the case for the plaintiff" or "the case for the defendant," as the case may be.

There is something final and irrevocable about that phrase. There is a legal insinuation that everything in favor of that party has been brought forth, or if not brought forth, is no longer admissible. The evidence is closed. The testimony is final. The court now moves to consider the evidence strictly as presented.

In the current controversy between utility and anti-utility factions, there is a fast growing conviction that the utilities have closed their case too fast—that the utilities have "rested" without bringing out the best points. It is all very well to be dignified and refuse to answer insulting or trivial attacks, but the attitude of being "too proud to fight," as the late President Wilson would say, never made a great hit with the public. Who is the jury in this great trial that is now being carried on in the newspapers?

The question whether or not the utility companies ought to tell their story to the public is hardly debatable; especially in view of the fact that savage attacks have been made from time to time upon the industry. It is always unfortunate to be forced into a position of defense but if attacks continue to be made and, if it is true that the public may be misled by what the utilities claim are false statements, then, as a matter of plain business policy, in the interest of the ratepayers themselves, the industry should present what it deems to be the facts. The average man possesses common sense and is able to weigh the evidence fairly well for or against any claim.

IN an address by Harry Reid, president of the National Electric Power Company at the recent convention of the National Electric Light Association in San Francisco he took the position that the utilities should tell their story. He said, among other things:

> "In a recent issue of a New York newspaper, there appeared twenty-eight columns of news stories, interviews, editorials, reports of committee hearings and various investigations, summaries of court decisions, and other material regarding just one industry in this country. Not for a long time has any one industry occupied the center of the stage so extensively. The newspaper I have in mind is widely considered to be one of America's outstanding newspapers and it is far from what is sometimes termed a "yellow sheet." It is a conservative and influential newspaper interested in giving its several million readers the news of the day. On just one day in just one newspaper, there were twenty-eight columns of material regarding this one industry! Facts, fancies, opinions, hopes, fears, threats, warnings, accusations, denials, pros and cons, charges, and countercharges. Let your imagination expand that picture to its real national and continuous significance.
>
> "What was this industry? It was the industry with which we are connected—the electric light and power industry in particular and the public utility industry in general.
>
> "Surveying the whole situation, we face two factors: first, the fact that the last few months have witnessed a growing campaign on the subject of utility regulation, control or ownership; second, the general public is not by training and experience qualified to judge for itself just where the real facts of the situation rest. To my mind, the most dangerous of these two factors is the latter. If people in general were capable of judging for them-

selves, we would not have to be greatly concerned with the widespread campaign now under way, because we would know that people would not be misled, confused, or fooled. But such is not the case. It is far from the case. The truth of the matter is that the public thinking regarding the utilities has been widely upset during these last few months. I am afraid that many people have accepted as gospel truth opinions that we know to be untrue. I think there are some twenty or twenty-five different misrepresentations and misunderstandings regarding the utilities which have become imbedded in the minds of many people—points that are as wide of the truth as they can be.

"In this connection, a study of the psychology of accusation is most interesting. If the man in the street is today scratching his head and saying to himself and his friends: 'Good heavens—can all this be true?' can we really blame him? Relatively and comparatively, the utilities have presented very little of their side of the question. It is human for people to believe that where there is so much smoke, there is probably a huge fire burning somewhere in the vicinity which—in this case—is in the electric light and power industry. In many political campaigns, for instance, it is an old trick to make a wide variety of charges just on the general principle that these accusations will unsettle public confidence in the person or organization attacked. The value of this subterfuge lies in the fact that people—as the newspaper boys will agree—are more interested in the sensational and the startling than in the prosaic and matter of fact, and also that many people are inclined to half believe or wholly believe accusations without taking trouble to hear the other side and then reach a fair conclusion.

"This human characteristic leads me to the thought that *the sin of silence is sometimes a dangerous sin.* If repeated charges are made against some man you know and if that man remains silent, would you not be inclined to conclude that his accuser spoke the truth? Now we may all agree that it is unfortunate to be drawn into a defensive position where it becomes necessary to speak out to defend ourselves, but we will also agree that we are sometimes forced to speak out so that the truth may be known. The point is clear-cut: Which is the lesser of two evils—to remain silent and allow people to decide against you or to speak up and state the facts so that you may be fairly and honestly judged?

"Aside from the damage done our industry by a policy of silence in the face of widespread attacks, there is the fact that by maintaining silence we are in effect allowing our critics to tell the public the story of our industry, distorted to fit their purposes and desires. That is, the public is hearing a misleading story and it is more than likely misjudging our industry because of that misleading story. How could it do otherwise unless our industry and its leading executives and companies step forth and place the real facts before the public? In short, why should we allow our enemies to tell our story? Why should not we ourselves tell our story?"

THERE are some who think that there is no possibility of silencing agitators by the presentation of facts; that silence is, therefore, the best policy. The majority of persons, however, will not agree to this. The utility industry is conducted by corporations, artificial persons it is true, but in reality by human beings. If the direct attack is made upon the character of a person by name, he is likely to resent it and show its falsity if he can.

The charge that telling utility stories to the public is at the expense of the ratepayers is only a half truth. The story is in the interest of the ratepayers if true, because hostile public relations aroused by misinformation is as bad for the ratepayers as it is for the company. But whether the agitators against the utility industry like it or not, the industry should tell the truth about the business and should not be intimidated by cries of propaganda.

Just to point to one excellent piece of evidence that appears to have been neglected or at least understated by the utilities in stating their case, we have the very interesting observation made by W. A. Jones, vice president of the N. E. L. A., to the effect that the electric industry is one of the few business undertakings which have been able to reduce their charges in spite of the general increase in prices which followed the war. Mr. Jones says:

"For more than forty years the trend in electric rates has been downward and, except for what we might term the war period, the rate curve has shown a rapid drop. The average rate for residence electricity at the close of 1929 was but 30 per cent of the price at which it sold in 1890. As contrasted with a 70 per cent increase in the cost of living since 1913, we have seen a 30 per cent decrease in the average rate for

domestic electric service since that time.

"Indications are that we should be able to even further reduce the cost and rates for electric service, but these further reductions, particularly in the domestic field, must come largely through increased sales. Our increased sales will likewise be largely dependent upon the design of rational promotional rates, which will encourage the maximum use of energy on a load factor which will make for lower service costs.

"There is still a wide divergence of opinion within this industry as to the proper method of charging for service and a casual examination of our rate book might indicate to the layman that each company was trying to outdo the other in a rate innovation. We within the industry know that this is not the case, and that in many instances political interference and arbitrary regulatory bodies have interfered with the promulgation of rational rates. But, we have been slow to recognize that this dissimilarity in rate structure has been the cause of much criticism on the part of those who wanted to find some vulnerable spot in our armor.

"The conditions under which our service is sold throughout the country are such that the time will perhaps never come when we will see a uniform rate, but there is no good reason why our methods of charging for service should not be uniform. It is to be hoped that the Rate Structure Committee of this association will have the full co-operation of the membership in its problem of designing methods of charging for service, which will at once protect our investment against the convenience user, who does not pay his share of the cost, and also permit intensive commercial development."

The big question now is whether the "Case for the Utilities" has been completed in the public mind; whether indeed the utilities have remained silent so long that the average reader has concluded that they have "rested" and will henceforth bar his mind to anything more they may say with the same attitude as a judge in refusing new evidence which should have been introduced at a trial since closed. This is a serious matter for the friends of these industries to consider.

THE SIN OF SILENCE. Address by Harry Reid, President of the National Electric Power Company, New York, and Chairman of the Public Relations National Section of the National Electric Light Association, San Francisco, June 17, 1930.

THE FUTURE OF THE ELECTRIC INDUSTRY. Address by W. A. Jones, annual convention of the National Electric Light Association at San Francisco, June 18, 1930.

Should Utility Rate Making Be a Legislative Function That Is Not Subject to Court Review?

ONE of the criticisms made by some against decisions of the Supreme Court of the United States in rate cases is that the court shifted its original position on the rate-making question. The court first held that rate making was exclusively a legislative function and was not subject to court review; afterwards the court held that the rate-making power, although legislative, is not without limitations. Gustavus H. Robinson, discussing this question, says:

"The history of the development of our law, whereby the utility is given protection under the Fourteenth Amendment to the Federal Constitution, is interesting.

"The leading early case is that of Munn *v.* Illinois. The question there at issue was, whether the state of Illinois could regulate warehousemen in the handling of grain. This was one of several cases known as the 'Granger cases.' The state took the position that the business to be regulated was a public business, subject to the police powers of the state; that the regulation thereof was lodged in legislative discretion; that this discretion could not be disturbed by the courts. The warehousemen contended that the Fourteenth Amendment gave them protection against enforcement of the regulations.

"The court, in an opinion by Mr. Justice Waite, Mr. Justice Field dissenting, upheld the contentions of the state of Illinois and decided that (1) the legislature had power to fix rates of public business; (2) that such rates were within the sole discretion of the legislature and could not be changed by the courts.

"The importance of this decision was at once recognized, and the law journals as well as the press of that day, have inter-

esting comments upon the decision. These comments are critical or otherwise, dependent upon the interests which might be reflected. Those journals which were presumed to represent invested capital, denounced the decision in no uncertain terms. The *New York Times*, in an editorial of March 29, 1877, referred to the decision as 'mischievous,' and argued that, under such a rule, the investment of foreign capital could not be expected. Evidently the investing public had something of the same idea, for railroad stocks and bonds declined immediately following the announcement of the decision.

"If the decision in the Munn Case had been allowed to stand, public utilities would today have little or no protection, and would be subject to the arbitrary will or whim of every succeeding legislature and regulatory Commission."

THERE will always be a difference of opinion as to the wisdom of placing any limitation upon the rate-making powers of legislatures and Commissions.

Is the economic welfare of the public promoted by lowering rates without reference to a reasonable compensation to the utility companies for their service, or by a limitation upon the legislative power to reduce rates below the confiscatory point?

It can at least be said that under the rule which undertakes to safeguard capital from confiscation, the development of utility service has been phenomenal.

These variations and inconsistencies in the development of regulatory policies are by no means confined to the past. Even the recent investigation by the New York Commission on revision of the Public Service Commission Law found a merry battle between opponents and proponents of a proposition for freezing utility rate bases by law that smacked familiarly of the ancient wrangle over present value and original cost.

An analysis of the criticism of Commission regulation will show that all complaints against it simmer down to a difference of opinion as to the reasonableness of rates, and bearing upon that question, a difference of opinion as to what shall constitute the rate base.

THE majority and minority members of Governor Roosevelt's Commission for the study of the New York Public Service Commission favored the establishment of a stable rate base, differing only as to the means of establishing it. The majority favored stabilizing it for ten-year periods by means of contracts. The minority favored establishing it by statute.

In a recent address before the Academy of Political Science, William J. Donovan, counsel for the Commission, pointed out the danger of freezing the rate base in the statutes. Speaking of valuation he said:

"The striking example of apparent inconsistency is that of valuation. This problem is one of many encountered in the detail work of regulation. It was the subject of discussion by all of the experts called in the recent investigation by the legislative Commission of this state and constitutes the most mooted question of that inquiry.

"The Supreme Court has held that a public utility is entitled to earn a reasonable return upon the fair value of the property which it is devoting to public service and that the fair value of the property must be determined as of the time the inquiry is made. In determining that value, the court has held that all relevant factors must be considered, including, among others, costs of reproduction new less depreciation, and original cost.

It is apparent that the application of this principle, at least to present-day conditions, has been difficult of administration, and has frequently resulted in injustice and hardship both to the consumer and to the utility. It has caused protracted litigation and has delayed final determination by the regulatory body from two to ten years, when that determination is no longer applicable and further litigation may well ensue.

"Today many of those who claim to represent the interests of the public contend that the value of the property for rate-making purposes should be based solely upon a consideration of its original cost. However, this has not always been the case. When Smyth *v.* Ames was decided in 1898, it was argued on behalf of the consumer that the reasonableness of rates to be charged by a public utility should be tested solely by a consideration of the cost of reproducing the property. At that time the general price level was so low that original cost far exceeded cost of reproduction. It was then contended that the consumer should not be compelled to pay rates based on such an arbitrary standard as the

amount of money actually expended by the utility. It was urged that the cost of rendering the service should determine its price, and that the measure of cost was more accurately reflected in the reproduction value. Finally, it was argued that to permit a utility to charge rates based solely on the amount of money which it had spent, would be to permanently burden the consumer with any investment, however injudicious or unprofitable it might prove to be.

"However, the Supreme Court in its decision repudiated this doctrine and held that the true legal and economic principles involved a consideration of all these factors; that if the rate base were determined solely by one or the other element of value, it might work injustice either to the consumer or to the utility.

"Today the general price level is so high that the situation is reversed, and as regards the great bulk of public utility property the cost of reproduction is greater than the original cost. Consequently many of those who claim to represent the public now contend that the rate base should be determined solely by the actual cost of the property.

"It has been contended that if in 1898 the actual cost theory had been accepted, as the utilities then urged, the general increase in the price level in recent years would have given the utilities such a low rate base that they would have found difficulty in maintaining their service at the high standard of efficiency which the public requires. On the other hand, the reproduction cost theory is now bitterly fought by the same interests that urged its acceptance by the courts in 1898. This analysis points to the dangers of writing into our law a fixed economic theory which, by reason of a change in the price level, may act as a boomerang to those who urged its acceptance. The machinery of government must have some give-and-take, or it will not work. It has been pointed out furthermore that if the original cost theory were written into our law, the result would be to make more pronounced the evils of the so-called business cycle, by encouraging expenditures for improvements and expansion programs at times when prices are high, rather than in time of depression.

"There are eminent economists who tell us that the real source of the difficulty is in unstable prices. They assert that whatever method is adopted we shall still have a continuance of confusion and waste until we have diligently and earnestly addressed ourselves to the problem of stabilizing the general level of prices."

This is a new thought in connection with the rate base. Usually the argument against a legislative effort to freeze the rate base has been that such a procedure would be unconstitutional. Mr. Donovan takes the broader ground that it would be undesirable.

THE LEGAL STATUS OF THE PUBLIC SERVICE INDUSTRIES. By Gustavus H. Robinson. *Harvard Law Review*, XLI, page 277. THE MATERIALS FOR THE STUDY OF PUBLIC UTILITY ECONOMICS. By Dorau, page 239. The MacMillan Company, 975 pages, $5.00.

ADDRESS BY WILLIAM J. DONOVAN, ESQ. *Proceedings of the Academy of Political Science.* Vol. XIV, page 171.

Uncle Sam's Unique Experiment in the Regulation of Local Utilities in Washington

ONE of the charges frequently made by those who criticize the effectiveness of state regulation of public utility companies is that the Commissions have not protected the public interest. This charge generally arises in the heat of a local rate controversy before the Commission. But it is difficult to see in the large number of decisions rendered by the Commissions any leaning away from the interests of the ratepayers to say nothing of the public interest.

Some assert that the very fact of the tremendous development of utility service under state regulation is a good indication of its effectiveness and the disposition on the part of the Commissions to be fair in the decision of disputed issues.

William A. Prendergast, formerly chairman of the New York Public Service Commission maintains that the Commissions have been fair and that they have acted with wisdom. He recently said:

"There are no serious indications that the people have any intention of abandoning the present system of state regulation. In some places there are demands for what

is called a more stringent form of regulation. Wherever this is required it should be instituted, by extending the powers of the Commissions. There is a suggestion made by an aspirant for office in one state that the present Public Service Commission be abolished and a 'fair rate board' established in its place. But this would only alter the name, and not the functions of the Commission. A fair rate board under any law would have to be one that was fair to all interests concerned, else its decisions would be speedily reversed and its work discredited. The theory that regulatory Commissions should be used to advance the interests of one class of persons to the disadvantage of others may serve political ends for a time, but experience will dispose of it as opposed to the principles of this democracy. In the main the regulatory Commissions have acted with wisdom and toleration. They have not been prosecutors or persecutors and the best interests of the public require that they should never be used for these purposes. What is sought, is the attainment of justice, the great ideal of liberty. This means justice to the people who use the services of the utilities, and in equal measure the utilities themselves. The policy of regulation that seeks and secures (as the present system has) fair rates and good service for customers, and adequate support for the capital invested in the utility business, is a wise and farseeing policy, and the prosperity and ultimate well-being of the American people demand adherence to that policy. On the judgment of unprejudiced observers, and an unbiased appraisal of the facts of the record, I maintain that state regulation has protected the public's interest."

Of course, the implication of Gifford Pinchot in his advocacy of a fair rate board is that the present Commission is unfair. Mr. Pinchot probably believes that our present State Commissions are not protecting the public without any definite basis for that charge except possibly his belief that the return should be limited to prudent investment rather than to the value of the property, the rule imposed by the Constitution as interpreted by the Supreme Court.

The rate-making function of the Commissions is by many persons regarded as its most important function, but it is only one of many functions. There are some persons who believe that rate fixing is the least important of the functions of the Commissions.

Whether rates fixed by the Commissions are too high or too low, even where all the facts relating to operation are known, is a matter of opinion upon which men may honestly differ.

Just for a concrete example let us consider the situation in Washington, D. C. According to some writers everything in the city of Washington, the capital of the Nation, is about as bad as it could be politically. The residents of the city cannot vote and the method of handling municipal affairs is in a class by itself. Even the regulation of public utilities, according to the critics, is somewhat different from what it is elsewhere. Says J. Frederick Essary:

"Finally, the District Commission has now lost its power over the public utilities of the capitol. A separate Public Utilities Commission, at present headed by another army officer, was set up in 1926 to relieve the Commission of the burden of supervising the operation, financing, and general service of the street car companies, omnibus lines, gas companies, the electric light, and the telephone companies. Perhaps it was an act of wisdom to transfer this supervisory power, formerly exercised by the District Commission, to an independent body. But whether for better or for worse, it was done, and so an entirely new regulatory agency was created.

"And how it regulates! It is, indeed, in the utilities field that the District government bogs to the hubs. It both bogs and stalls. The control of the capitol utilities may be measurably effective in matters of minor importance: that may be fairly conceded. Rate increases may be delayed, if not defeated. Service here and there may be jacked up. But in major matters, this control breaks down completely. Where else in a modern American city can one find two street car lines, each practically duplicating the service of the other? Where else would one think of looking for four car tracks paralleling each other on a single street, as in the case of Fourteenth street, N. W., at New York avenue? Where else would one such company be allowed to refuse junction transfers to the passengers of the other without extra fare?

"For decades they have quarreled in Washington over the consolidation of the street car lines. They are still quarreling. Again and again merger plans have been worked out, and argued before the successive Commissions and the committees of Congress. But they never come to anything. Some obstacle—watered stock or the obstinacy of salaried officers wishing

to hold their jobs or something else—is always raised. And the riding public continues to pay in cash and in inconvenience.

"But that is not all. It is hard to believe that anywhere else in the country two gas companies will be found serving the population of a single community. But it is so in Washington. More than that, the two companies are owned by the same interests. But they have separate operating organizations, separate overhead generally, and in a sense separate rate scales. As in the case of the street car companies, merger plans have been discussed for years. But always some legal or technical or economic reason is found why one of these companies cannot absorb the other.

"Such conditions as are created by these anomalies would not, of course, be tolerated by any self-governing people. They are resented in Washington—bitterly resented—but there is nothing the people can do about it. They may scream at the local government or bawl at Congress, but neither the warring governmental agencies nor the hard-boiled utility magnates pay any attention. They do not need to. The Washingtonian is a political orphan and must take or leave what the indifferent or callous or fatuous powers that rule or rob him may offer."

ACCORDING to this writer the regulatory powers are divided but this does not seem to be much different from the rule that prevails in the states, local authorities having control over franchises and streets. He says:

"Although it is true that the Public Utilities Commission regulates the rates and service of the utility companies, authority over them is divided again. For it is the District Commission which has most to do with the physical use by them of the streets. To that body they must go for permits to upturn the paving in a given section or dig yawning ditches here, there, or elsewhere.

"The indifference of the companies, abetted by the Government, to public convenience is typical of the whole attitude of public officials in Washington toward the inhabitants. At the moment this is being written, for instance, the Capital Traction Company has been for seven weeks monkeying with its tracks on Connecticut avenue, west of Rock Creek bridge. That avenue is by far the busiest thoroughfare outside downtown Washington. But instead of spending a few days at such a job, this company, unhindered by the engineer commissioner, has had débris and machinery piled in the center of the street for nearly two months, forcing thousands of motorists day and night to thread their precarious way around it. Nor is that an isolated instance. Not by any means. Much the same thing may be observed in any part of the city in any week in the year.

"It is obvious to any observer in the District that most of the griefs of the community are chargeable to the interlocking of the local and Federal organisms. For some of this, there is no easy escape, inasmuch as the Constitution itself provides that Congress 'shall exercise exclusive legislation . . . over the District of Columbia.' But instead of delegating its powers to some board as was done in the case of the Interstate Commerce Commission, with a mandate to run the District as it ought to be run, or handing the government over to the people themselves, Congress exercises those powers itself."

Well, politics aside, Washington is a very fine city to live in and certainly it is a mecca for tourists.

HAS STATE REGULATION PROTECTED THE PUBLIC'S INTEREST? An address by William A. Prendergast before the National Electric Light Association, San Francisco, June 19, 1930.

AN ADVENTURE IN AUTOCRACY. By J. Frederick Essary. *The American Mercury*. July, 1930.

The Regulation of Holding Companies and its Effect Upon Utility Rates

ONE of the controversial questions which has sprung up recently is to what extent, if any, utility holding companies or investment companies should be put under the regulation of State Commissions.

There would seem to be no question but what the security issues of these companies could be regulated by state authority if such regulation were deemed a wise public policy. A state that creates a corporation has the undoubted right to regulate its securities.

Regulating the security issues of a company is one thing; regulating charges for its service is another.

Charges for service cannot be regulated unless the business of the company is affected with the public interest; in other words, unless it is a utility company. Whether a holding company is a utility company is open to question.

DISCUSSING the question of the regulation of holding companies, Martin J. Insull, President of the Middle West Utilities Company, Chicago, recently stated:

"During the past year there has been considerable discussion of public utility regulation. Some people take the position that regulation has broken down and have suggested changes in the regulatory laws which they think would make regulation more effective. One of these suggestions is that the holding companies should be brought under regulation. The legal aspects of this proposal I shall not discuss, although it is pertinent to question the legality of attempting to regulate the holding company whose business is not directly affected with a public interest. As to regulation having broken down, the facts of the case seem to strongly indicate that on the contrary regulation has been beneficial to the consumer, to the investor, and to the industry. Even its critics must recognize that under state regulation our industry is constantly growing, that it has the financial stability to attract from the investor the necessary new money for a reasonable return in interest or dividends with which to improve its service facilities to meet the constantly increasing public demand at continuously diminishing rates for its service. That is a record of which not only the industry but also its regulators may well be proud.

"As to the regulation of the holding companies, this suggestion is based upon the erroneous impression that holding companies affect the rates the public pays for service. It is questionable if this impression exists to any great extent among the consuming public; it seems rather to exist principally among self-appointed protectors of the public who in many cases assume that position as a possible stepping stone to their own personal ends. As I have already shown, there is no connection between the security issues of an investment or holding company and the rates for service of its subsidiary operating companies.

"Holding companies, like other corporations, must have their securities passed on by state security commissions or approved by such authorities as they recognize before they are sold. As these security commissions in many states came into being after the utility regulating Commissions, the regulation of operating company security issues has been left with the utility regulating Commissions. Their real function, however, should be the regulation of rates and service and not that of regulating the issuance of securities. Their approval of the issuance of securities is in no sense a recognition of those securities for rate-making purposes. Hence no reason exists for the enlargement of this extraneous function to cover the regulation of security issues of holding companies. Regulation is not concerned with these companies. Its interest is in the operating companies. If it is necessary for regulation to cover the operating companies external business contacts and relations, they can and should be covered through the operating companies by regulating their actions.

"The holding company or utilities investment company requires, for the successful performance of its function, the same freedom of action as any other business. It is that freedom that has enabled it to do the great work it has done."

THE rates of operating companies, of course, are not based upon their capitalization, nor are they governed by the controlling interest in the company. They are based solely upon the value of the property devoted to the public interest. That question was settled many years ago in the famous case of Smyth *v.* Ames, and the Supreme Court has never modified the position it took at that time.

The only question which could arise would be in cases in which the holding company charged for certain services rendered to the operating companies. It is argued by the managers of the utility companies that the State Commissions now have ample power to protect the public from excessive charges for these services. Some of the State Commissioners, however, assert that they should be given more authority to inquire as to the reasonableness of these charges. Whether that can be done as a legal proposition is one question. Whether it ought to be done as a matter of public policy is another.

HOLDING COMPANIES AND THEIR RELATION TO REGULATION. Address by Martin J. Insull before the Annual Convention of the National Electric Light Association, San Francisco, 1930.

A Significant Opinion on Commission Control of Interstate Gas Carriers

THE same rule of law laid down by the Supreme Court that exempts interstate bus carriers from the control of the State Commissions applies to interstate pipe line carriers transporting gas, according to an opinion rendered August 28th to the Maryland Public Service Commission by its general counsel, Honorable W. Cabell Bruce, former United States Senator from that state.

Mr. Bruce's opinion was expressed as the result of an inquiry made to him by the Commission concerning its power to require the Maryland Gas Transportation Corporation to ask its permission to construct a proposed pipe line carrying natural gas from Pennsylvania fields into the District of Columbia.

This is apparently the first authoritative statement on this legal problem, although attorneys versed in utility law have long expected its development. Mr. Bruce's opinion assumes that the corporation merely intends to deliver gas to distributing utilities. He adds that he believes the pipe line carrier to have power to condemn land for its right of way through the state of Maryland. He says:

"If the intent of the corporation is to construct a pipe line over the state of Maryland, but not itself to distribute gas from it to Maryland consumers, it is under no obligation, in my opinion, to apply to the Commission for its permission and approval before beginning construction or exercising its franchise within the State of Maryland.

"In Bush *v.* Maloy, 267 U. S. 317, it was held by the Supreme Court of the United States, reversing the decision of the court of appeals of Maryland in 143 Md. 570, that the Maryland statute prohibiting common carriers of merchandise or freight by motor vehicle from using public highways over specified routes without a permit, requiring the Public Service Commission to investigate the expediency of granting a permit when applied for, and authorizing it to refuse, if it deems the granting of the permit prejudicial to the welfare and convenience of the public, was unconstitutional as applied to one desirous of using the highways as a common carrier in exclusively interstate commerce. See also Buck *v.* Kuykendall, 267 U. S. 307.

"I can not see why the conclusions reached by the Supreme Court of the United States in the case of Bush *v.* Maloy should not be equally applicable to a gas-pipe line used exclusively in interstate commerce, or to a telephone line that is a mere working appurtenance of such a gas-pipe line.

"And it is also my opinion that, if it is the intent of the Maryland Gas Transmission Corporation merely to deliver gas from its proposed pipe line, at one point or another within the state of Maryland, to a wholly independent distributing company, or companies, it is under no obligation to apply to the Commission for its permission and approval before beginning construction or exercising its franchise within the state of Maryland. On this point, the decision of the Supreme Court of the United States in Missouri *v.* Kansas Gas Company, 265 U. S. 298, is conclusive."

MR. BRUCE expressly advised the Commission against any attempt to interfere with the avowed proposals of the carrier, stating:

"Under the circumstances, my advice to the Commission is to hold its hand until the price agencies, by which gas from the proposed line of the Maryland Gas Transmission Corporation shall be distributed within the state of Maryland, shall have been more fully determined by the course of future events. In the meantime, I wish to be understood as not passing upon the question as to how far the permission and approval of the Commission would be necessary were the corporation to undertake to distribute gas from its proposed line within the state of Maryland to a distributing subsidiary company, or companies, under its control.

"Answering the second inquiry of the Commission, I will say that, in my opinion, the Maryland Gas Transmission Corporation has the power to condemn land within the state of Maryland. Though a foreign corporation, authority to do this is expressly conferred upon such a corporation by the condemnation laws of this state. Article 23 of the Annotated Code of Maryland, 1929 Supplement, Section 337 A."

Official action on this opinion by the Maryland Commission was expected at an early date, and it should establish a noteworthy precedent on this development of regulatory law, both for Maryland and elsewhere.

Other Articles Worth Reading

JOINT OPERATION OF MUNICIPAL UTILITIES IN WISCONSIN. By E. Orth Malott. *The Journal of Land & Public Utility Economics;* pages 307–310. August, 1930.

LEGAL VERSUS ECONOMIC PRINCIPLES IN UTILITY VALUATION. By D. F. Pegrum. *The Journal of Land & Public Utility Economics;* pages 235–240. August, 1930.

MUNICIPAL OWNERSHIP AND THE CHANGING TECHNOLOGY OF THE ELECTRIC INDUSTRY: TRENDS IN USE OF PRIME MOVERS. By Paul Jerome Raver. *The Journal of Land & Public Utility Economics;* pages 241–257. August, 1930.

MEASUREMENT OF RISK IN PUBLIC UTILITY INDUSTRIES. By John F. Reinboth. *The Journal of Land & Public Utility Economics;* pages 295–306. August, 1930.

NEW YORK STATE STUDIES REGULATION. By John D. Sumner. *The Journal of Land & Public Utility Economics;* pages 258–269. August, 1930.

OWNERSHIP OF ELECTRIC POWER. By Floyd C. Carlisle. *Current History;* August, 1930.

ROCHESTER'S CITY OWNED UTILITIES. By L. A. Cowles. *Public Ownership;* August, 1930.

Publications Received

GOVERNMENT FAILS IN INDUSTRY. New York; Joint Committee of National Utility Associations. 34 pages.

THE MECHANICS OF PUBLIC RELATIONS. By Clark Belden. New York; National Electric Power Company. 12 pages.

Why the Electric Utilities Are Reaching Into the Farm Districts

ONE horsepower hour costs him 25 cents when provided by a horse.

THE average price paid by the U. S. farmer per horsepower hour is 19 cents.

ONE horsepower hour costs him 5 cents when bought from a *large* electric company.

ONE horsepower hour costs him 5 cents when furnished by a windmill, and wind is free!

ONE horsepower hour costs him 15 cents when furnished by a *small* electric company.

ONE horsepower hour costs him 25 cents when he uses electricity from his own farm power plant.

THESE above are all facts from the U. S. Department of Agriculture.

—C. M. RIPLEY

WHAT READERS ASK

Out of the mail bag of the editors have come these questions; because they touch upon subjects of broad interest to those in the public utilities field, they have been selected for publication—together with the answers. What questions do *you* want to ask?

Question

Can you state what proportion of Commission cases are appealed to the courts?

Answer

It is impossible to state this accurately, but from the records of 21 Commissions, it appears that out of a total of 142,704 cases before the Commissions, 1,389 have been appealed to the state courts, and 108 to the Federal courts. Of the total number of court appeals from cases before these Commissions, only 318 have involved rates, and only 177 valuation. The great bulk of Commission regulation, therefore, proceeds, as if there were no courts. In other words, procedure before the Commissions is generally final. Appeals to the courts are occasional exceptions to the rule.

Question

It has been charged that state regulation of public utilities has broken down because of interference by the courts and especially by the Federal courts. What does this mean?

Answer

What is meant by that is that if it were not for the decisions of the Supreme Court that utility companies are entitled to earn a return on the present value of their property, the Commissions would limit the return to the prudent investment of the company. At the present time, on account of high prices, it is thought that the adoption of the prudent investment theory would produce lower rates. Therefore, it is said that the courts interfere with regulation because they prevent the Commissions from reducing rates by preventing the Commissions from adopting the prudent investment theory. It is also argued that because the value of property fluctuates, there is no stable basis of rate making, and, therefore, no effective regulation.

The basis of the Supreme Court decision is that while the power to regulate is a legislative function, the power is not unlimited; that the power to regulate does not include the power to take the company's property without compensation. The court holds that confiscation of the income of property is confiscation of property within the meaning of the Constitution.

The whole controversy arises out of a difference of opinion as to the reasonableness of rates based upon the cost rather than the value of the service.

Question

What are some of the important requirements in the standards for gas service?

Answer

The standards for gas service in most cases include meter accuracy requirements and pressure requirements. The most important part of the standard is concerned with the composition and heating value of the gas. As to this latter requirement the greatest variations are found in the standards which are maintained in the different states and in some cases within a single state. The efficiency of the utilization of gas is affected by variations in heating value, pressure, density, and chemical composition. (See "An Adaptation of the British Gas Act to American Practice and Regulation," by Martin T. Bennett, gas engineer, Railroad Commission of Wisconsin, in the *Journal of Land and Public Utility Economics*, May, 1930, p. 113.)

QUESTION

What is meant by informal complaints to Public Service Commissions?

ANSWER

Informal complaints are those that are adjusted through the offices of the Commission without formal procedure. Many of these complaints from customers of utility companies are started by mere letters to the Commission setting out the nature of the complaint. Many of the complaints are adjusted by correspondence. Some of them may require the attention of a member of the Commission's staff. If the complaint cannot be adjusted to the satisfaction of the utility company and the customer, the complaint becomes a formal matter for the consideration of the Commission.

These informal complaints often constitute an important part of the regulatory routine. The New York Commission, for example, received on the average more than forty of these complaints a day. Probably from 80 to 90 per cent of the informal complaints are adjusted without formal action of the Commissions.

QUESTION

Is hydroelectric power a gift of nature?

ANSWER

Hydroelectric power is no more a gift of nature than steam power. Water, as it lies on the surface of the earth, is nature's gift; but that is the extent of the gift. Before water can be used for a locomotive, it has to be run into a boiler, heated, and converted into steam. Before it can be used for hydroelectric power, it must be made to run through a turbine which, in turn, is made to run the generator. In many cases high dams have to be constructed in order that the water may be available for the turbine. Water, like a tree in a forest, is the raw material which has to be converted into power. This conversion requires human labor. That is what makes it necessary to charge for the service.

QUESTION

In what states are the rates of the municipally owned plants regulated by State Commissions?

ANSWER

In the following twelve states east of the Mississippi municipal plants are subject to regulation by Commissions: Florida, Indiana, Maine, Maryland, Massachusetts, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, West Virginia, and Wisconsin. In the following four states west of the Mississippi similar jurisdiction obtained: Missouri, Montana, Utah, and Wyoming.

So far as the first group is concerned, it is to be noted that the jurisdiction in Florida, Massachusetts, and Pennsylvania is somewhat limited. In Florida, jurisdiction is restricted to telephone companies; in Massachusetts the Commissioners' jurisdiction is restricted to gas and electric companies; in Pennsylvania jurisdiction is restricted to municipal water works of the third class. Likewise in the second group the Missouri Commission's jurisdiction is restricted to municipal gas, electric, and water utilities. There appears to be a limited jurisdiction in the states of Alabama, Nevada, and Nebraska but the power of these Commissions is so restricted as to eliminate them from any serious consideration of municipal utilities. In the remaining thirty-two jurisdictions, including the District of Columbia, the Commissions lack power to regulate municipally owned utilities. Delaware has no Commission.

QUESTION

A company operates dissimilar utilities in the same community. Should rates be based upon the combined return?

ANSWER

The commingling of operations of utilities furnishing different kinds of service, such as electric service and street railway service, has been disapproved generally. Although in some instances companies which were earning an adequate return on their entire enterprise have not been permitted to abandon a part of the service which was unprofitable, and claims of confiscation may sometimes be met by a showing that the entire business of the company is profitable, yet as an economic matter, according to the opinion of the Commissions, the ratepayers in one department should not be required to make up for deficiencies in another department. *Re* Georgia R. & R. Co. (Ga.) P.U.R.1921A, 165; *Re* Bronx Gas & Electric Co. (N. Y.) P.U.R. 1917B, 777; *Re* Georgia Power Co. (Ga.) P.U.R.1928A, 830; Work *v.* Elmira Water and Light Co. (N. Y.) P.U.R.1927B, 400; State ex rel. Washington University *v.* Public Service Commission (Mo. Sup. Ct.) P.U.R.1926A, 765.

QUESTION

Does not the very fact that there is so much criticism of mergers and consolidations indicate that they are a menace to the public?

ANSWER

This consolidation movement may or may not be an advantage or disadvantage to the public, but one cannot conclude that it is a menace to the public from the mere fact that it has been subjected to quite general criticism.

In this respect history is merely repeating itself. There was a time when great fear for the public welfare was expressed over the multitude of stage coaches and caravans. It was said that they prevented the breeding of good horses and destroyed those that were bred, and that they effeminated the people. Railroads were objected to because it was said that the smoke would destroy vegetation and cause the hens to cease to lay eggs. Steamboats and gas lighting were objected to on religious grounds; and many of the arguments now leveled against consolidation are a mere repetition of those used against the department store. Even bathtubs were objected to at the outset. New adjustments in the economic field are quite likely to cause alarm. Whether that alarm is justified time alone will demonstrate provided the development is not prevented by law.

QUESTION

If the utilities insist on a high value of their property for rate-making purposes, why should the same value be used for tax purposes?

ANSWER

The natural answer of taxpayers would be that the value should be the same for both purposes; but such a rule would be unfair, unless all other property were taxed at its full value. But another objection is that such a tax would defeat its real purpose which would be to punish the company for insisting on what the ratepayers regard as high values for rate purposes.

Ratepayers who think their rates are too high because the utilities are allowed to earn a return on what they call "inflated values," often demand that the tax value be increased in order to get even with the utility. But if this were done it would only mean that their rates would be still further increased, because the additional sum paid in taxes would be charged back to them in their rates as it should be.

Utility ratepayers are apt to have the same attitude toward utility taxes that renters of houses do toward real estate taxes. Often the tenant does not care how high local taxes are because he thinks the landlord pays them. A tax imposed on a utility company becomes a tax on the stockholders only when the company is unable to make a reasonable return after it has paid the taxes levied against it.

As a "get even" weapon, it would, therefore, be effective only against weak companies. Weakening weak companies by increasing the burden of their taxation might not be very beneficial to the public.

QUESTION

Would not the adoption of the prudent investment theory of rate making discourage the management of utility companies by removing the incentive for additional profit due to efficiency?

ANSWER

No. The prudent investment theory would have no bearing upon that question. Not all of the advocates of the prudent investment theory insists upon a fixed rate of return upon the rate base. Any reward for special efficiency should appear in the rate of return rather than in the base upon which the return is figured.

Although there is a difference of opinion as to the question whether a utility company should be allowed anything for special efficiency in management, the prevailing opinion is that there should be some reward for it. The State Commissions have generally held that the keen and energetic utility owner, who by good judgment, foresight, and approved business methods, reduces his plant investment and operating costs to a minimum should be allowed a larger percentage of return than the utility owner, who through lack of ability or indifferences furnishes service at a much higher cost. This is sound or unsound doctrine without respect to the question whether earnings should be based on prudent investment or on the present value of the property.

QUESTION

As I understand it, Governor Franklin D. Roosevelt of New York would limit the amount of a utility company's return, as follows:

He would allow all operating expenses, enough to pay interest on the

bonds, and then a reasonable return on only the amount of money advanced by the stockholders, and represented by their stock. Is this what is known as the prudent investment theory?

ANSWER

No. Governor Roosevelt refers to it as the prudent investment theory, but the prudent investment theory, as usually understood, is that the utilities should be allowed a return on the reasonable cost or prudent investment in the property rather than on its present value. If a property cost $10,000,000 and the investment were a prudent investment, the company would be allowed to earn a reasonable return on $10,000,000. It would make no difference whether they put the money up themselves, or borrowed a portion of it.

Governor Roosevelt is really advocating, not the prudent investment theory, but the capitalization theory of rate making. It is much the same theory which the railroads contended for back in 1898, in the famous case of Smyth *v.* Ames. It was at that time objected to by the ratepayers.

QUESTION

On page 537 of the May 1, 1930, issue of PUBLIC UTILITIES FORTNIGHTLY, *I notice the following:*

> "What is forbidden by the Federal Constitution with respect to the rate base applies to the legislatures as well as to the Commissions of the various states."

I would appreciate a citation of your reference to the Federal Constitution forbidding or directing what shall constitute a rate base.

ANSWER

This reference is to the Fourteenth Amendment of the Federal Constitution. There is, to be sure, no mention of a rate base in this amendment. The amendment was adopted before the term "rate base" was coined. But the Constitution, as interpreted by the Supreme Court, does forbid the establishment of a rate base so low as to amount to confiscation. Whatever one may think as to the wisdom of the ruling, it is the law. So the Constitution forbids the establishment of a rate base on prudent investment. The Constitution, as interpreted by the Supreme Court, says that the return to which public utilities are entitled must be based on the present value of their property used and useful for the service.

It, therefore, appears to be reasonably apparent that this is a limitation of the regulatory power which applies to legislatures as well as to Commissions. Rate statutes have, in fact, been declared confiscatory.

There are many things which legislatures cannot do. One of them is to fix any sort of a rate base they please. That is because the Federal Constitution, as interpreted by the courts, has set limits to legislative powers.

QUESTION

It is often asserted that state regulation of public utilities has collapsed. Upon what evidence are statements like that based?

ANSWER

Usually upon no evidence whatever. It is almost as if persons should keep repeating that the earth is flat. Some would believe it, if the assertion were made frequently and emphatically enough.

The statement that state regulation has collapsed, however, is often reënforced by certain assumptions and arguments which simmer down to a mere difference of opinion as to the reasonableness of rates. Because the courts do not permit the adoption of a certain theory of rate making those who believe in that theory say that regulation has broken down. They never refer to what the Commissions are doing for the public in the way of reducing rates, or of requiring the extensions of utility service, or of the removal of unlawful discriminatory practices, or of the elimination of wasteful competition, or of the control of security issues; nor do they ever refer to the thousands of cases in which regulatory action of Commissions is required and exercised, in the public interest.

In other words, the assertion that Commission regulation has broken down is supported for the most part by academic theories of rate making and mere expressions of opinion, without any presentation of facts whatsoever.

Even where Commission regulation has been investigated by hostile legislative committees, the facts in support of it have been so overwhelming that no legislative committee has recommended its abolition as it would have done if the assertion that Commission regulation is ineffective were true. Several of the committees have reported that this particular charge was absolutely without foundation.

The March of Events

Commission Power to Exclude Costs from Capital Account

WHETHER the Federal Power Commission has the power to require a licensee to omit from its capital account an item of cost representing an expenditure actually made is the question raised in proceedings involving the hydroelectric development on the Saluda river, near Columbia, South Carolina.

The Lexington Water Power Company advances the view that, under the Federal Power Act, the Commission has no jurisdiction, power, or authority to require a licensee to omit from its capital account such an expenditure, and that items cut out by the accounting division of the Commission represented actual expenditures by the company and were legitimate items of prelicense cost.

This contention is based upon the theory that the Commission cannot adjudicate in advance the question what constitutes the net investment in the project, but that the act contemplates that the question of net investment is to be determined at the time the government exercises its option to recapture the project.

Charles A. Russell, solicitor for the Commission, disagrees with this view and in a brief states that "if the position of the protestant is tenable and correct, then the whole Federal Water Power Act is merely an idle gesture." He argues that since the law requires that licenses issued by the Commission shall specify a reasonable rate of return upon the actual investment, the actual legitimate investment would have to be determined.

Alabama

Lower Rates for Rural Electric Customers

A REVISED rural service classification of the Alabama Power Company approved by the Public Service Commission will bring about a saving of approximately $27,000, according to the Montgomery *Journal and Times*, which adds:

"The revised rate is more liberal in its application to domestic service and allows the use of an electric range up to 8 kilowatts, water heating and miscellaneous appliances up to a total of one and one-half kilowatts without extra charge.

"The new rate allows one-fifth of a kilowatt of outside lighting without extra charge. This, it was explained, makes it possible for a rural customer to reduce his monthly electric bill $4.05.

"Electricity will be available, under the new rate, for lighting, heating, cooking, refrigeration, or power service or any combination of these, up to a demand of 50 kilowatts.

"The new line charge for the first one and one-half kilowatts is as follows:

"Over fifteen and less than twenty customers per mile $1.50 a month; over ten and not more than fifteen customers per mile $2 a month; over five and not more than ten customers per mile, $3; five customers or less, $3.50."

Provisions are also made for special ratings in towns served from a rural line.

Rate Refund Order Is Contested

THE Alabama Power Company has appealed from the ruling of Circuit Judge F. W. Hare that ratepayers in Mobile are entitled to refunds because the company did not apply the so-called Montgomery rate in Mobile in 1928. The decision was made in a test case involving an award of $6.01, but there is said to be involved approximately $150,000 in refunds to Mobile electric consumers.

California

Deficit Faced by San Francisco Railway

THE San Francisco Municipal Railway, according to J. P. Hannan, superintendent of accounts for the board of public works, faces a financial crisis that will require assistance from the city treasury unless patronage increases. The San Francisco *Chronicle*, in reporting this statement, says:

"The road will be more than half a million dollars in the 'red' next year, Hannan estimates, basing his figures on the current flow of nickels into the cash boxes, the bonds and bond interest that must be paid and the preservation of the depreciation and accidents reserves.

"The deficit at the end of the current fiscal year is estimated at $73,361.85. Soon after July 1, 1931, $100,000 for bond redemption and $9,067.50 for bond interest must be paid, he points out.

"Hannan adds $331,862.50 should be included in the 1930–31 budget to pay off bonds and interest due this fiscal year.

"Hannan submits a new estimate of revenue for this year of $3,500,000, which is a drop of $83,500 from his estimate of May last. He accounts for the decrease by comparative receipts in May, June, July, and the first half of August in 1929 and 1930. The income was $29,062 less in that period this year than last year.

"The biggest decline was in July, when the fares totaled $274,983 as compared with $286,773 in July, 1929."

Construction Started on New Railroad Link

THE inaugural shovel of earth in the construction of the Western Pacific's share of the link connection with the Great Northern in Northeastern California was turned on August 16th high in the mountains near the foot of Lake Almanor. This connection will provide San Francisco with another transcontinental rail system.

This $13,000,000 combined rail project, according to the San Francisco *Chronicle*, may be completed so that trains may run by the end of next year. In the Western Pacific end of the project there will be eleven or perhaps twelve tunnels, seven of which occur in ten miles, but none of which is longer than 1,050 feet. The *Chronicle* comments as follows:

"Careful attention has been paid to the elimination of grades on the new line. Cutting off from Keddie, the right of way is of such altitude it causes comment.

"Engineers explained this allows for a through line and a connection with not more than a 2.2 per cent grade northbound and not more than a 1.8 per cent grade southbound."

President H. M. Adams, of the Western Pacific, termed the construction one of outstanding importance, the completion of which by connecting the Western Pacific and the Great Northern will create a new condition in the railroad system of the country, of benefit to the public chiefly because it will create a new all-rail route.

Connecticut

Charges against Commission Declared to Be Untrue

CHARGES by Professor Albert Levitt regarding enforcement of the grade crossing law by the Public Service Commission have been branded untrue by the attorney general's office before the superior court. The court has been asked to pass upon the charges rather than to require the attorney general to compel the Commissioners to appear in court to show cause why they should not be removed from office.

The trouble started some time ago when Professor Levitt, with other voters, filed a petition demanding that the attorney general proceed to have the Commissioners removed for failure to compel the removal of railroad crossings. The matter went to the highest court of the state, where it was held that the attorney general had no discretion to decide whether the charges were sufficient to justify such a proceeding, but that he must proceed if the allegations in the petition stated facts which, if true, might justify the action. In regard to this latest move the Bridgeport *Post* says:

"The attorney general's office told the court it had made a thorough investigation of the allegations to determine whether there existed any substantial reasons for the taking of legal steps to remove the Commissioners from office and as a result of this investigation found the following allegations of statements were manifestly untrue: That the railroads have not removed a single grade crossing under the provisions of § 3710 in

the past five years; the statement that the net earnings of the railroads in Connecticut since 1924 was reported by the Public Utilities Commission are 'clear profit'; that had the railroads removed or applied for the removal of at least one grade crossing each year for every 50 miles of road operated by them in this state, there would still have been 'clear profit' to the railroads of nearly $4,000,000 in 1925, over $6,000,000 in 1926, $7,000,000 in 1927, and over $14,000,000 in 1928; that the financial condition of the railroads warranted the removal or application for the removal of at least one grade crossing each year for every 50 miles of road operated by them in this state; that the Public Utilities Commission failed to enforce and obey the grade crossing act; that the Public Utilities Commission have been guilty of material neglect of duty.

"The attorney general in his petition holds that as the representative of the state of Connecticut and the people thereof on the grounds of public policy he should not be called upon to bring against the Commissioners of the Public Utilities Commission a complaint which seeks to oust them from their office based upon charges which he well knows to be untrue and furthermore he should not be compelled to bring such a complaint upon the receipt of a writing, signed by 100 or more electors of this state, entertaining allegations which he knows to be manifestly untrue until he has been granted an opportunity to attack the allegations of said writing on the ground that they are manifestly untrue."

District of Columbia

Retirements on Cost or Value Basis

SINCE the Federal Government bought a part of the property of the Potomac Electric Power Company, the question has arisen whether the property should be taken out of the company's account on the basis of its cost or the present value. The company, according to the Washington *Post;* wants to mark it off at the cost figure of $2,448,000, but the Commission has pointed out that the plant has been valued to include the increment, with a consideration of going value and the replacement cost.

The company has been operating under a plan by which each year a rate reduction is made to the extent that the revenues for the preceding year exceeded 7½ per cent return. In keeping the basis for the return adjusted another question has come up in regard to depreciation. By taking accrued depreciation into account each year in readjusting the rates, an additional factor would be employed in reducing the electric bills of the customers. The Commission has intimated that this would be a proper procedure.

Objection has been made that the company adds to the rate base the cost of items of property before they are actually in service, and the point has also been raised that the company adds to its rate base the cost of extra poles and wires for which the consumers pay, before the consumers are reimbursed for their outlay. The customers contribute in the first place, and then, when other consumers are added, refunds are made.

Natural Gas to Be Used

A CONTRACT has been agreed upon between the Washington Gas Light Company and a subsidiary of the Columbia Gas & Electric Company for bringing natural gas into Washington, according to an announcement to the Public Utilities Commission on August 20th. Both the Washington Gas Company and the Columbia Gas & Electric Company are controlled by the United Founders Corporation.

Introduction of natural gas in Washington, says the Washington *Post,* will not interfere with the company's plan to lower gas rates.

The gas standard has been fixed at 600 British Thermal Units, which is said to be about the highest standard required for manufactured gas in any large city in the country. It has been contended by manufacturers that to get a gas of 600 British Thermal Units quality increases the cost out of all proportion to the cost of producing a gas of 500 British Thermal Units. Despite the extra cost, however, the *Post* says, it is believed by company officers that any effort to reduce the quality would stir up such a protest as to injure the good will the new owners want to build up with the consuming public, and it is planned to accept the existing standard for the present.

Maine

Sale of Electric Plant

THE Cumberland Power & Light Company has asked Commission approval of its purchase from the Pepperell Manufacturing Company of Biddeford of all of the property and equipment for generating electricity and steam owned by the latter company for $2,400,000.

The company asked authority to issue $2,400,000 worth of 5 per cent bonds to consummate the deal. If the sale and bond issue should be authorized, the Commission was asked to approve a contract by which the Cumberland Light & Power Company would furnish all electricity to the Pepperell plant at Biddeford for ten years and steam for five years, the electricity would be furnished at the rate of 1 cent per kilowatt hour the first forty-eight months and 8 mills for the balance of the term. The minimum payment would be $120,000.

The Commission, after a hearing on August 22nd, took the matter under advisement.

Massachusetts

5-Cent Fare Asked

THOMAS F. Carroll, representative from Revere, according to the Boston *Christian Science Monitor*, has sent a letter to the public trustees of the Eastern Massachusetts Street Railway Company suggesting that they follow the lead of the Boston Elevated in lowering short-haul fares by providing for a 5-cent fare within the city of Revere.

He states that it is his impression that the Eastern Massachusetts Railway might well increase their earnings and ultimately furnish better service by increasing patronage. From observation and experience, he continues, it would seem that a 5-cent intracity fare in Revere would be a step in the proper direction. This might be accomplished by means of books of tickets or separate strips of them.

Minnesota

Toll Charge between Twin Cities under Attack

COMMISSIONER Frank W. Matson of the Minnesota Railroad and Warehouse Commission, according to the St. Paul *Pioneer-Press*, has announced that he would seek to have the Commission force abolition of telephone toll charges between St. Paul and Minneapolis if the Commission approves the sale of the Tri-State Telephone Company of St. Paul to the Northwestern Bell Telephone Company, which controls the Minneapolis properties.

Although there may have been justification for this charge when the properties were separately owned, he believed that under the combined ownership the charge should be eliminated. He pointed out that every Minneapolis exchange is linked directly with every St. Paul exchange at the present time, and that St. Paul and Minneapolis constitute one compact area for telephone service. He said that the mere existence of municipal boundary lines alone no more justifies a toll charge between cities than it would between wards or sections of either city.

The sale of the St. Paul and suburban holdings of the Tri-State Company was announced on August 13th by George W. Robinson, president of the Tri-State Company. Authority to proceed with the sale must be secured from the Commission.

The Tri-State Company, according to the newspapers, has expressed its willingness to abolish the toll rates between the twin cities, but has pointed out that the service would have to be paid for by all subscribers. It is merely a question of how the service is to be paid for. If the public wishes to spread the cost over all telephone users that is said to be agreeable to the company.

Eugene M. O'Neil, city attorney of St. Paul, according to the St. Paul *News*, warned the city council that it should take no action in regard to elimination of intercity telephone tolls without full investigation. To do so, he pointed out, might react to the detriment of the majority of telephone users in St. Paul by increasing their charges.

There is under way a general investigation

of telephone rates by the Commission. This investigation was started as a result of the purchase of a controlling interest in the Tri-State Company by Theodore Gary & Company, which paid $200 a share for 80 per cent of the corporation stock.

New Jersey

Broadcasting Application before Commission

THE Public Utilities Commission has been hearing an application of the Atlantic Broadcasting Company for permission to erect a 50,000-watt broadcasting transmitter for station WABC in Wayne township. Opposition to the station was led by Duane E. Minard, special deputy attorney general, representing the state of New Jersey. Senator Emerson Richards appeared as counsel for the petitioners.

The rapid development of the radio art, says the Newark *Star-Eagle*, was demonstrated at one of the hearings when E. H. Sommer, a radio dealer, classed radio receivers four years old as "ancient." He testified that only those persons equipped with modern receivers could hope to eliminate interference from high-powered broadcasting stations. The opinion was expressed by witnesses that the establishment of the proposed station would make it necessary for a large number of listeners to purchase new receivers or forego the pleasure of listening to radio programs.

Cost of Moving Wires and Pipes for Station

A DISPUTE arose last month over the question who should bear the cost of moving conduits, wires, and pipes to make way for the City Railway and the Pennsylvania station in Newark. Then Edmund W. Wakelee, vice president of Public Service, stated that the company was willing to bear a portion of the cost although later negotiations would have to determine what portion.

This statement followed a declaration by Mayor Congleton that the city was prepared to defend in the courts its contention that Public Service should bear the brunt of the cost involved. Mr. Wakelee, according to the Newark *News*, said he did not consider fair the criticism of the city and Public Service for failure to incorporate in its city railway lease agreement any provision for the moving of the wires. The lease agreement was between the city and Public Service Coordinated Transport while most of the wires and conduits are the property of Public Service Electric & Gas Company, which was in no way a party to the lease agreement.

New York

Water Power Commission Appointed

GOVERNOR Roosevelt has announced the appointment of five members to the commission which was authorized by the legislature to prepare a plan for development of the state-owned hydroelectric resources on the St. Lawrence river. The Commissioners are directed first to study the feasibility of state development.

The members appointed by the Governor are Representative Davenport, of Clinton, N. Y., Thomas H. Conway, Julius Henry Cohen, counsel to the port authority of New York and New Jersey, Samuel L. Fuller, and Professor Robert M. Haig of Columbia University, who will be chairman.

A report by the commission is to be made to the legislature on January 15th after the reconvening of the legislative body. It is said that if the members of the commission find state development not feasible, they may submit another plan.

Cut in Train Service Stirs Opposition

FRANCHISE requirements of the New York, Westchester & Boston Railway came into the limelight with the inauguration of Commission hearings as the result of a cut in train service. New York city and other municipalities along the White Plains line, Port Chester line, and Mt. Vernon spur objected to the reduced service.

A falling off in revenues and passengers during the past six months was given as the reason for the curtailment. One witness said that there had been a drop of about 90,000 passengers during the first half of this year below the total for the same period in 1929. He testified that economies effected would create a saving of only about $150,000 to $200,000 a year as against a deficit of $2,000,000. These figures were attacked by the municipal representatives.

Milo B. Maltbie, chairman of the Public Service Commission, has ruled that the Commission has full power to pass on the reasonableness and adequacy of the service in the event that the railroad succeeds in proving that its franchises do not control.

Police Drive on Unauthorized Bus Drivers

THE New Rochelle police last month issued summonses to Yonkers bus owners and drivers under the law requiring consent of cities and authority from the Public Service Commission to operate.

It was charged that the drivers violated § 66 of the Transportation Corporation Law, but the bus companies, it is understood, urge that the legal formalities required by this law may be dispensed with when the business is temporary or seasonal. This raises a new question as to the meaning of the Transportation Corporation law.

Ohio

Cars Ordered to Stop at City Limits

A CONTROVERSY has developed between the city of Bellevue and the Lake Shore Electric Railway over a street paving proposition. Several weeks ago, says the Fremont *Messenger*, the Bellevue council instructed the prosecuting attorney of Huron county to file ouster proceedings in common pleas court, which, if carried into effect, would prevent the rail line from operating inside the city limits. The *Messenger* continues:

"This action, it appears, has been counteracted by a ruling of the Public Utilities Commission that it has control over affairs of utilities and that the rail line cannot be moved without its sanction.

"The latest development is in the form of an ordinance adopted by the Bellevue council in which all L. S. E. Ry. cars are compelled to come to a complete stop before entering the corporation limits of the place, police having orders to carry out demands of the municipal law.

"Agitation to force the traction company to remove its tracks from the main street of the community is said to be due to the fact that the rail concern refused to satisfactorily pave its portion of the street.

"During a conversation in Fremont several days ago, Harry Rimelspach, claim agent and vice president of the L. S. E. Ry., said that his company was not worried over the Bellevue affair and that the city might lose the railway much sooner than it expects."

Local feeling is said to run high.

Pennsylvania

Industries Lose by Failure of Freight Rate Compromise

ALL attempts to compromise Pittsburgh's so-called $2,000,000 iron and steel short-haul freight rate case, says the Pittsburgh *Press*, have been abandoned, and the case must go to a decision before the Pennsylvania Public Service Commission. This paper adds:

"Recent increases in short-haul iron and steel rates, penalizing steel companies of this district more than $5,000 a day in higher rates, are being fought by about 60 steel companies of the district, with the aid of the Pittsburgh Chamber of Commerce.

"Railroads serving the district had offered a compromise, terms of which had not been made public, but which were understood to be favorable to the shippers' cause.

"Now, however, it is understood that the Interstate Commerce Commission, which ordered the changes resulting in the increases in this district, has informed the railroads that it could not countenance or aid in a settlement. Conferences with the Interstate Commerce Commission would have been essential."

The shippers are asking the Commission to reduce the rates to the level in effect before May 20th when the increases went into effect. Such reduction, he said, is essential

if Pittsburgh is to compete effectively with other mid-west steel-making centers. Final hearings were concluded by the Commission on August 13th, but according to the papers it is not believed the Commission can hand down a decision before the middle of October. By that time the increased rate will have cost Pittsburgh industry probably $750,000 even in case of a favorable decision by the Commission.

Compromise Sought on Electric Valuation

ENGINEERS of the Public Service Commission and the Scranton Electric Company last month in order to avoid delays held a series of conferences in order to adjust the valuation and depreciation figures of the various estimates presented before the Commission. The Commission had ordered the company to show why its rates should not be reduced.

The figures to be reconciled showed differences of more than $3,000,000 on the rate-base value of the company's properties, according to the Bethlehem *Times*. The company's estimate of the depreciated value was $27,977,786, while that of the Commission's engineers was $24,907,083. The *Times* states that a decrease in rates is almost certain to result, in view of the fact that counsel and officers of the electric company have formally admitted at the hearings that the present rates should be reduced. Officers of the company, says the Harrisburg *Telegraph*, stated that they were considering a new lower rate schedule when the Commission began its action.

Washington

City Meets Snag in Refinancing Railway

SEATTLE'S chances for refinancing its Municipal Street Railway debt through a new issue of long-time utility bonds, says the Seattle *Times*, at present are decidedly slender. This paper does not take a very hopeful view. It continues:

"This is the picture of the situation presented today by Mayor Frank Edwards, prime mover in the refinancing efforts, as a result of further conferences with investment bankers and advisors closely in touch with the bond market of the country.

"With the Street Railway Department problem again acute because of its inability to cover its current payroll with cash from revenues and at the same time to meet minor bond and interest payments, despite the two-year moratorium on its major debt installments, arranged by Mr. Edwards himself a few months ago, an entirely new program of relief probably will have to be devised."

Efforts headed by the mayor, says the *Times*, have been under way for more than a year to assure a satisfactory market for about $10,000,000 in new street railway bonds, payable in about twenty years. This, it was figured, would wholly retire the balance of nearly $9,000,000 still owing to the Puget Sound Power & Light Company on the purchase price of the system.

The Latest Utility Rulings

COLORADO COMMISSION: *Re Arkansas Valley Natural Gas Co.* (*App. Nos. 1505, 1506; Decision No. 2998.*) The Commission reaffirmed its decision that it is not necessary to compel a distributing gas utility to secure the cheapest available source of supply at all times. (*Reviewed in this issue.*)

COLORADO COMMISSION: *Re Hall Truck Co.* (*App. Nos. 1384, 307-AA.*) Although the territorial scope granted by the Commission in a certificate of convenience and necessity to a motor trucker appeared to be larger than originally asked for by the applicant, such additional authority was held to have been abandoned by the failure of the carrier to serve in the added territory.

COLORADO COMMISSION: *Re Webb.* (*App. No. 1577.*) The Commission held that public convenience and necessity required the exercise by Mr. Webb of powers to be contained in a permit if and when granted by the Federal Power Commission, authorizing the development of a power site at the lower end of Lake San Cristobal, as well as the construction of certain transmission lines in the vicinity of Lake City.

GEORGIA COMMISSION: *Re Georgia Power Co.* The electric company was ordered to show cause why (on Sept. 2nd) it should cut its rates 50 per cent in Crisp county in order to compete with the municipal plant of the city of Cordele. (*Reviewed in this issue.*)

ILLINOIS COMMISSION: *Cook County v. Indiana Harbor Belt Railroad Co.* (*No. 19526.*) Although doubting its own authority to determine whether the expense of the separation of railroad grades should be borne entirely by one of the companies, or whether there existed a valid contract giving rights to another railroad company and a municipality involved, the Commission held that it was undoubtedly authorized to determine the necessity for the proposed improvement and to apportion the cost among the parties concerned as might generally appear reasonable leaving them to enforce their contract rights if any in the proper tribunal.

ILLINOIS COMMISSION: *Peoples Gas Light & Coke Co.* (*No. 20175.*) A gas utility was permitted to change the form of its rate schedule so that instead of charging for the number of cubic feet of gas used, rates hereafter will be calculated in terms of therms, a therm being a unit of heat value equal to 100,000 British Thermal Units. This is a rate experiment long sought for by gas rate experts, and its results will be watched with great interest. (*Reviewed in this issue.*)

ILLINOIS COMMISSION: *Re Super Power Co. of Illinois.* (*No. 19747.*) In granting authority for the construction of a transmission line from Blackstone, in Livingston county, to Powerton, Illinois, the Commission refused to entertain a proposal by objectors to the application to construct the line over a different route along section or half section lines in view of the fact that such proposed route would be 33 miles longer and would encounter a number of public highways with telephone and telegraph lines causing probable inductive interference.

ILLINOIS SUPREME COURT: *White County v. Louisville & Nashville Railroad Co.* (*No. 20073, 172 N. E. 22.*) An order of the Commission requiring a railroad to repair a highway bridge was held to be unwarranted where trains were operated over a high trestle crossing the railroad and such construction did not affect the highway in any manner.

IOWA SUPREME COURT: *Iowa Railway & Light Corp. v. Lindsey.* (*No. 39893.*) Where an electric company was authorized by the Railroad Commissioners to construct electric transmission lines on a highway, the county commissioners were held to be without power to locate poles so that part of construction would overhang adjoining land.

MAINE SUPREME COURT: *Gilman v. Somerset Farmers Co-operative Telephone Co.* (*No. 1230.*) An order of the Maine Commission compelling the physical connection of two telephone companies was held to be unconstitutional where one of the companies was compelled to transfer messages originating on its own lines and destined to a point served by the other company to the latter's lines "at the exchange nearest the origin of the message." The court stated that the originating company should have the right to use its own lines to carry the message as near the destination as possible before transferring it.

MASSACHUSETTS COMMISSION: *Re Edison Electric Illuminating Co.* (*D. P. U. 3642.*) Upon complaint by the mayor of Boston and numerous other municipalities against the rates charged for electricity, particularly in the operation of heavy duty household appliances, the electric company's general commercial and residential small power rates were reduced to 7½ cents per kilowatt hour, causing an estimated reduction in the company's income of approximately $1,300,000 a year. The Commission believed that with the gain in business which might be reasonably expected that the reduction would not impair the credit of the company or deprive it of earnings sufficient to pay dividends adequate to maintain its stock in the market at at least $215 per share, which is the highest figure at which it has been required, under Massachusetts laws, to offer increases in its stock to its holders.

MISSOURI COMMISSION: *Re Springfield City Water Co.* (*Case No. 6252.*) In allowing a rate increase of approximately 24.7 per cent of the gross revenues of water sales so as to yield a return of approximately 7 per cent, the Commission found that the present fair value of the property involved was $3,350,000. In determining the value of the water company's land, the Commission ruled that it should be appraised at the fair normal market value of other land in the immediate vicinity, and not upon the fact that the property was beautifully landscaped, and that the reservoirs on same formed attractive lakes that would make the property very desirable for resort purposes or summer cottages.

MONTANA SUPREME COURT: *Great Northern Utilities Co. v. Commission.* The power of the Commission to fix minimum as well as maximum utility rates so as to prevent rate wars was held to be validly founded in statute and not violative of the state or Federal Constitution. (*Reviewed in this issue.*)

NEW JERSEY COMMISSION: *Fox-Crest, Inc. v. Public Service Electric & Gas Co.* An electric company was ordered to refrain from enforcing any general rules and regulations by means of which it would prevent the installation of electric wires along the rear property lines in residential sections. A complaint asking that the company be ordered to install its lines in such a manner was sustained.

NEW YORK PUBLIC SERVICE COMMISSION: *Re Jamestown Motor Bus Transportation Co.* (*Case No. 4304.*) This bus company is a subsidiary of the Jamestown Street Railway Company and the Chautauqua Traction Company, and was authorized to operate from the village of Lakewood to the city of Jamestown, instead of railway service previously rendered. The objection of an existing carrier was overruled in view of the fact that the change simply involved a substitution of existing service and no new service would be rendered.

NEW YORK PUBLIC SERVICE COMMISSION: *Re Schenectady Rapid Transit, Inc.* (*Case No. 6297.*) Permission was given to the petitioner to charge increased passenger fares on its busses operating in Schenectady, so as to co-ordinate its rates and service with the service rendered by the Schenectady Railway Company now in the hands of the Federal receivers.

NEW YORK SUPREME COURT: *Colonial Motor Coach Corp. v. Cayuga Omnibus Corp.* (*243 N. Y. Supp. 145.*) A bus line operating between Syracuse and Auburn was not permitted to reroute its service between the same terminals although claiming an emergency making such change necessary, in the absence of authority from the Commission, and its operation in such a manner was enjoined upon suit by a competitive bus company.

PENNSYLVANIA COMMISSION: *National Plate Glass Co. v. Pennsylvania Railroad Co.* (*Complaint Docket No. 8176.*) A complaint asking for reparation because of alleged excessive railroad freight payments and based solely on a previous finding of the Commission as to the unreasonableness of such rates, and awarding reparation accordingly, was held not to be sustained in the absence of further evidence of the unreasonableness of the rate in question, where such former finding of the Commission had been held invalid as beyond the power of the Commission by a superior court. The proceeding was continued for the taking of further evidence.

SOUTH DAKOTA COMMISSION: *Re Babcock.* (*Report 1013-A, 360-B.*) A certificate of convenience and necessity issued to copartners operating as motor carriers in interstate commerce was revoked on evidence showing their failure to abide by tariffs and schedules of rates on file with the Commission; their failure to make proper returns as required by law, and other irregular and discriminatory practices.

SOUTH DAKOTA COMMISSION: *Re Chicago, Milwaukee, St. Paul & Pacific Railroad Co.* (*No. 5957.*) A statutory provision granting authority to the Commission to authorize the abandonment of an agency station, having a total income of "less than $1,000 for a consecutive three months" was construed to mean an income of less than $1,000 per month, rather than $1,000 for the entire three-month period mentioned.

WISCONSIN COMMISSION: *Bangor v. Chicago, Milwaukee, St. Paul & Pacific Railroad Co.* (*R-2359.*) Action of the village of Bangor in passing a resolution affecting the protection of a crossing situated outside of the village limits was held to be illegal. The proposal of the railroad company to substitute flash lights for crossing gates, although admittedly effective, was denied in view of the united opposition on the part of the local governmental units and individuals living in the vicinity of the crossing involved.

WISCONSIN COMMISSION: *Haines v. Sawyer & Western Telephone Co.* (*U-3990.*) A so-called mutual telephone company maintaining a switching connection with other telephone companies was for that reason held to be a public utility and as such was not permitted to require the purchase of stock by a subscriber as a condition precedent to the extension of service.

WISCONSIN COMMISSION: *Re Bloomer Electric & Water Co.* (*U-4004.*) The Commission on its own motion and investigation found that the utility was earning an excessive rate of return, and a revised schedule of rates proposed by the city of Bloomer was ordered to be placed into effect.

WISCONSIN COMMISSION: *Re Wisconsin Power & Light Co.* (*U-4005.*) The imposition of a higher service charge to an electric customer served from one section of a rural extension line than upon a customer served from another section was held to be discriminatory where the line was built as a unit, and where the cost of service to all customers served from it was the same. A common service charge to such customers was accordingly ordered. The charge should be the same to all served at the same cost.

NOTE.—The cases above referred to will be published in full or abstracted in *Public Utilities Reports.*

The Utilities and the Public

"Thermic" Gas Rates for Chicago

For a considerable time now, a number of rate experts have been telling the gas industry that its method of computing rates should be changed. Gas in this country is at the present time generally measured by cubic feet—usually at so much per thousand cubic feet. Perhaps that was a fairly practical yardstick in bygone days when nearly every city used artificial gas. Now, however, the improvement in the development and transmission of natural gas with its superior heating qualities is making this supply either in pure or mixed form available for an increasing number of communities.

In the August 21st issue of PUBLIC UTILITIES FORTNIGHTLY there were published comments by Mr. E. R. Weaver, chief of the gas chemistry section of the U. S. Bureau of Standards, and Mr. Martin T. Bennett, gas engineer of the Wisconsin Railroad Commission, to the general effect that rates should be so charged as to take cognizance of the heating value of the gas supplied.

Mr. Weaver pointed out the advantages that would accrue to the utility from the change by gaining both freedom and opportunity from this more flexible rate criterion.

Notwithstanding such endorsement by these and other noted rate experts, the utilities and Commissions in this country have not seemed very anxious to put the reform into practice, although it has a long and honorable record of successful operation in England.

As far as can be hastily ascertained, it remained for the Peoples Gas Light & Coke Company to adopt the recommendation of the U. S. Bureau of Standards in this regard. The recent proposal has the endorsement of the Illinois Commission and the rates went into effect in Chicago on August 1, 1930.

The new rates involve no actual increase or decrease in the charge for service, but consist merely of a revision in form to conform with the "thermic measure." In order to accomplish this, the new rates are stated in terms of "therms," a therm being a unit of heating value equal to 100,000 British Thermal Units.

For the present, the meters will be read as heretofore upon the basis of the number of cubic feet of gas used. The volume of gas indicated by the reading will then be calculated in therms in accordance with a table based upon the heating value standard by the Commission. Of course, this is only the first step in this direction.

Ultimately, there will be experiments made with meters reading directly in therms instead of cubic feet. Meanwhile, however, the success of the Chicago experiment is being watched with great interest by all concerned with the further development of the service.

Of course, nearly all of our State Commissions having power to supervise gas service have adopted standards of heating content for gas. Their standards vary from 420 B.T.U. to 660 B.T.U. The thermic measure, however, will have the effect of charging the customer only for heating value actually received and the fluctuation of the B.T.U. content would accordingly make no difference to the pocketbook of the average customer.

A New Rate War in Georgia

THE sound of a new rate battle between a privately owned utility and a municipal plant comes from the state of Georgia. The combatants appear to be the municipal electric plant of the city of Cordele, operating in Crisp county, and the Georgia Power Company, functioning in the same territory. If this were all, there would be no news value to the matter, but the intervention of a third party—the Georgia Public Service Commission—makes the situation of more than passing interest.

According to P. S. Arkwright, president of the Georgia Power Company, the municipal authorities struck the first blow by a drastic rate reduction in Crisp county. Mr. Arkwright said "their deliberate purpose apparently is to destroy our business in Cordele and Crisp county."

Claiming to act in self-defense, so as to protect an investment of several hundred thousand dollars in that neighborhood, the company cut all energy rates 50 per cent. This brought the matter to the attention of the Georgia Commission.

The Commission issued an order for the company to show cause on September 2nd why its rates throughout the state should not be at the same level. Chairman James A. Perry, in promulgating the order, made the following oral statement:

> "One of the things on which the law regulating public utilities is most explicit is the requirement that there shall be no discrimination in favor of one community over another, and this appears to be a case of discrimination."

This is likely to precipitate an issue that will bear watching. Georgia and the neighboring state of Alabama have, through their Commissions, both adopted a policy of more or less state-wide uniform electric rate fixing. Both Commissions have jurisdiction over private companies, but, like nearly all other southern states, neither Commission has power to regulate the rates of municipal plants.

Confining our attention to Georgia, it is obvious under this condition of the law that the private company is going to be at a disadvantage. Of course, the right answer to the problem would be to give the Commission authority over the municipal plant as well, but it would be a long while before such a legislative reform could be achieved, if ever. What will the Georgia Commission do now? That is the immediate question.

Will the Commission suspend its policy of state-wide uniform rate making for the private company in Crisp County and give the company a free hand to battle it out with the municipal plant on even terms without one-sided interference? Or will the Commission feel that the right of the consumers throughout the rest of Georgia to a nondiscriminatory rate is superior to whatever annoyance the company might suffer from municipal competition in Crisp county?

The result of this controversy should indeed be of great regulatory interest. Some day after we have had more regulatory situations such as exist in Crisp county, the legislatures of some of our states may see the folly of placing their Commissions in the embarrassing position of having either to permit wholesale discrimination by utilities in order to engage in rate wars, or else to hold one of the combatant's hands while its adversary showers him with blows.

Montana Commission Given Right to Impose Minimum Rate

SPEAKING of rate wars, the Montana supreme court seems to be the newest tribunal to sustain the power of the State Public Service Commissions to

fix minimum as well as maximum utility charges so as to prevent rate cutting by competitive utilities.

While this holding is strictly in line with a well-established regulation principle, it is well to remember that this principle is not universally accepted. There yet remains a small coterie of states where the legislative policy appears to encourage rather than discourage competition between utilities.

Heretofore the position of Montana was not clearly defined. If anything, the legislative policy of the state seemed to lean towards open competition—at least, that is what one would naturally suppose offhand in reading the following passage from the court's opinion:

> "Many of the states have enacted statutes designed to prevent the very situation now existing at Shelby, by requiring a utility, before it commences the construction of any part of its plant, to procure from the Commission a certificate of public necessity or convenience. Thus far, our legislature has enacted no such statute, and, therefore, the Commission may not prevent several utilities, each dealing in the same product, from entering the same field, although one may be amply sufficient to serve the needs of such community."

This, of course, has nothing to do with rate fixing, but one might reasonably argue that if a legislature intended to permit two utilities to occupy territory only big enough for one, they also intended to permit them to fight it out without interference as long as rates did not exceed a reasonable maximum.

As the court intimates, the trouble started at Shelby, Montana, where the Great Northern Utilities Company and the Citizens Gas Company are rendering service in competition with each other. After both utilities had filed with the Commission maximum rates, which were presumably reasonable, the Great Northern suddenly announced a drastic cut. The Citizens Company complained to the Commission that the cut was not due to its competitor's generosity, nor made in good faith. It claimed that the reduction was intended solely to run it (the Citizens Company) out of business.

After holding hearings, the Commission was inclined to agree with the complainant and ordered the Great Northern to jack up its rates to a level based upon a "reasonable relation to the cost of service."

This order precipitated the court proceedings which resulted in the latest decision. The court saw two questions in issue: First, did the Commission have *statutory* authority to fix minimum as well as maximum rates? Secondly—assuming the statutory authority—did the fixing of minimum rates violate the state or Federal constitutional rights of the Great Northern Company?

In determining the first point in favor of the Commission, the court observed that the statute gave to the Commission authority to supervise not only utility rates but also utility service. It was pointed out that service rendered at a rate below the cost of production was bound to result in either a cessation of service or a recoupment of rates. The court imputed to the legislature the conclusion that intermittent service is as costly and at least equally detrimental to the public interest as is an exorbitant charge.

The court stated:

> "It is an inexorable law that if more is taken out than is put in, regardless of how large the surplus, the supply will eventually be exhausted. Thus, if the utility may sell its product at a loss, then the provisions of the statute are rendered impotent, for the Commission is unable to regulate the character of service to be rendered."

Likewise, the constitutional objections were resolved in favor of the Commission's position, the court remarking upon the similar powers exercised by the Interstate Commerce Commission as the result of an act of Congress that has often met constitutional tests imposed by the United States Supreme Court.

Distributing Utilities Are Not Compelled to Obtain Cheapest Wholesale Supply

AGAIN the Colorado Commission has taken the position that it is not necessary, in authorizing natural gas service, to impose as a condition, that the company must take advantage of any future opporunity to obtain its source of supply at a lower wholesale rate and exercise diligence in finding out about such bargains.

This ruling appears to be the third and final chapter, as far as this Commission is concerned, in a development of regulatory law that is likely to become a precedent. It was made in the case of the Arkansas Valley Natural Gas Company.

Some months ago the Commission granted to the Arkansas Company a certificate to operate a natural gas company in the city of Los Animos. The company had tentatively contracted with a wholesale carrier supplying gas in interstate commerce at a specified rate for twenty years. Although the Commission could see nothing wrong with the wholesale rate at the time, the question arose whether this rate would always be considered reasonable—whether or not the term contract would not have the effect of "freezing" the rate structure.

To take care of these objections the following clause was put into the original certificate:

> "If and when the applicant can obtain a sufficient quantity of natural gas of the same quality from any other source than now available, at materially lower rates than provided for in a contract between the Colorado Interstate Gas Company and the Arkansas Valley Natural Gas Company, dated Nov. 27, 1929, that it then will be required to do so and to give the consumers the benefit of such a materially lower rate."

Serious objections were raised against this treatment of the matter. It was argued that it embarrassed and hampered the distributing company in obtaining any wholesale supply on stable terms. Accordingly, in a similar proceeding a short while later by the Public Service Company, the Commission expressly reversed itself and declined to insert the condition in the Public Service certificate.

This action, naturally, caused the Arkansas Company to ask the Commission to show similar favor towards it. In the latest proceeding, by a 2 to 1 decision (Chairman Bock dissenting), the Commission has reaffirmed its ruling in the Public Service case. The Commission said, in the course of its opinion:

> "That this Commission may at any time in any rate case omit from the rate base such expense as is shown to have been incurred improvidently or in bad faith is, we believe, quite clear. There is no reason whatever why this proposition does not apply with equal force to contracts in respect of interstate commerce. No authority that it does not apply can be found. The imposition at this time of the condition in question doubtless would not affect the legal standing of the contract which the distributing company already has made."

There is very little authority exactly in point on this question, and this final thought of the Colorado Commission will undoubtedly receive much consideration by other tribunals when similar situations arise.

Æsthetic Values in Utility Regulation

DOES regulation make any allowance for art and beauty? This is a broad question and it deserves a broad answer. The answer is Yes and No. The ideals of art and beauty have very often clashed with the necessities of grim reality, and it is not unusual to find the æsthetic element intruding itself even upon the sphere of utility regulation.

Ever since, and possibly before, the English writer Ruskin lamented the invasion of railroad systems because he saw in them hideous blots on the beautiful English landscape, outweighing their value as carriers, we have heard people lament the unsightly aspects of public service facilities. Transmission lines and trolley poles have been decried as eyesores.

On the other hand, many railroad terminals, such as the Union Station at Washington, have been lauded as edifices of great beauty. Practical men often have as little patience with the persistent æsthete as the art lovers have for the "ogres of commerce." But the love of the beautiful is an ideal just as deepseated in human nature as service and much older. We must remember that the arts reached comparative perfection when science was still in swaddling clothes, which goes to show, if anything, that mankind wants beauty first and efficiency afterwards.

Be that as it may, a recent ruling of the Attorney General expressly forbids the Federal Power Commission from giving any consideration to scenic beauty in determining the convenience and necessity for hydroelectric developments. On the other hand, State Commissions have refused to rule out as "non-useful property" ornate power stations and other utility buildings and structures merely because "an adequate property" might have been erected for less money.

It is probably due to this liberality in permitting utilities to capitalize the value of handsome properties (within reasonable limits) that the offices of many gas, electric, and telephone companies are among the finest civic buildings in existence in this country.

The rule in this regard is that the manner and method of the construction of a property will be left to a utility's discretion and unless manifestly abused, the result will be included in the utility's rate base. Any different rule would result in compelling utilities to erect the ugliest and plainest of structures.

There is a limit, however, to the computation of such values. Beautiful property, of course, increases surrounding values. What about this "unearned increment" where the utility itself owns the surrounding properties?

This question came before the Missouri Commission very recently when it was ascertaining the rate base of the Springfield City Water Company. The water company's reservoirs had made the surrounding land, which also belonged to the water company, so attractive that real estate men appraised the land at a price too fancy to suit the Commission.

In moderating these findings the Commission said:

> "In matters of this kind, land should be appraised at the fair normal market value of similar land in the immediate vicinity. The Commission's engineers did not so advise the appraisers, and several of these gentlemen have testified that their values were based in some instances on the facts that the property was beautifully landscaped, and that the reservoirs on same formed attractive lakes that would make the property very desirable for resort purposes or summer cottages.
>
> "The depositions show that a very considerable number of owners of large tracts of land adjacent to and near the company's reservoir sites place an entirely different value on these lands as well as their own lands and their testimony is substantiated by a few sales."

"I saw a sign in one of the Omaha street cars, in Omaha, which read: 'Don't talk to the motorman.' That is a very proper sign. It depicts a common attitude. We are all of us too busy operating our own machine down the busy streets of life to stop and visit."

—John E. Curtiss

Public Utilities Reports

COMPRISING THE DECISIONS, ORDERS, AND RECOMMENDATIONS OF COURTS AND COMMISSIONS

VOLUME 1930D NUMBER 4

Points of Special Interest

SUBJECT	PAGE
Furnishing lamps not merchandising but utility service	321
Continuance of competing utility service under reasonable rates	332
Abandonment of unprofitable interurban line	336
Jurisdiction of state over interurban railway	336
Service-at-cost contract not depriving Commission of authority	348
Right to seek increased rates when contract has been breached	348
Review of former Commission valuation	357
Acquiescence in the use of prudent investment	357
Valuation of water rights	357
Treatment of going value or development cost	357
Promotional rates for rural electric service	357
Submetering of electric current contrary to public policy	383

Titles and Index

TITLES

Bangor Hydro-Electric Co., Re ..... (Me.) 336
Commonwealth Edison Co., Consumers Sanitary Coffee and Butter Stores v. ..... (Ill.) 321
Consumers Sanitary Coffee and Butter Stores v. Commonwealth Edison Co. ..... (Ill.) 321
8284 Corp. v. Garey ..... (N. Y. Mun. Ct.) 383
Portland Electric Power Co., Re ..... (Or.) 357
State ex rel. Kansas City Pub. Service Co. v. Latshaw ..... (Mo. Sup. Ct.) 348
Vilas County Electric Service, Re ..... (Wis.) 332

INDEX

Apportionment, snow removal, 336.

Burden of proof, abandonment of service, 336.

Commission jurisdiction, abandonment of railway, 336; contracts, submetering, 383; over rates, 348.

Commissions, valuation duties, 357.

Competition, electric utility, 332.

Contracts, Commission jurisdiction over, 383.

Depreciation, amount allowed, 357; deduction of accrued, 357.

Development cost, 357.

Discrimination, furnishing of lamps, 321.

Franchise contracts, breach of, 348.

Franchise rates, change of, 348.

Going value, 357.

Incandescent lamps, furnishing of, 321.

Interstate commerce, jurisdiction of State Commission over interurban railway, 336; jurisdiction over electric railway, 336.

Interstate Commerce Commission, jurisdiction over electric railway, 336.

Nonuseful property in valuation, 357.

Operation, charges to, in valuation, 357.

Original cost, 357.

Overheads, allowance, 357.

Presumption as to former valuation, 357.

Prudent investment, 357.

Rates, electric, 357; reasonableness, 357; rural promotional, 357; street railway, 348.

Reproduction cost, 357.

Res adjudicata, in valuation, 357.

Service, abandonment, inadequate return, 336; burden of proof in abandonment, 336; Commission jurisdiction, abandonment of railway, 336.

Submetering, Commission jurisdiction, 383.

Valuation, 357.

Water rights, valuation, 357.

What Should a Pole LOOK LIKE?

NOT so many years ago, poles were solely an engineering problem. No one gave much thought to their appearance. The poles were there for a specific purpose—and they served that purpose.

But Union Metal engineers had definite ideas as to how a modern pole should look. They put these ideas to work. And so, after years of research and designing, the Fluted Steel Pole was developed.

Here was a pole made for the modern city, gauged to the tempo of 200-foot boulevards, airports and skyscrapers. A pole that did its work surely but unobtrusively.

So well is this pole designed that it blends into the background of city streets—becomes a part of the city plan.

As for strength, Union Metal Heavy Duty Poles often replace two old style poles. They support trolley-span wires, street lighting units, distribution lines and other electrical equipment. One type of pole carries all services.

Many of the largest utilities in the country have installed these distinctive poles for they realize that by so doing they are contributing to the City Beautiful movement. Detroit, Cleveland, Pittsburgh, New Orleans, Los Angeles and Topeka are typical of the larger cities which are benefiting from this modern equipment. Each installation means a better looking street, an uncluttered curb. To the utilities it means economical pole lines, uninterrupted service—and the building of permanent good will.

THE UNION METAL MANUFACTURING COMPANY
GENERAL OFFICES AND FACTORY CANTON, OHIO
SALES OFFICES: New York Chicago Cleveland Boston Los Angeles San Francisco Seattle Dallas Atlanta
DISTRIBUTORS
General Electric Merchandise Distributors Graybar Electric Company, Inc.

UNION METAL DISTRIBUTION POLES

Public Utilities Fortnightly

VOLUME VI — *October 2, 1930* — NUMBER 7

Almanack 385
Aspiration ..... (*Frontispiece*) 386
The Propagandist in the Public School ..... *Clyde R. Miller* 387
When the Utilities Enter the Federal Courts ..... *Henry C. Spurr* 395
Getting the Tax Without Being Blamed for It 405
Why Not Regulate Investment Instead of Return? ..... *Bruce W. Knight* 406
(*with an introduction by James C. Bonbright*)
Remarkable Remarks 420
What Others Think 422

A Plea to Abandon the "Artificial Concepts of Fair Value and Fair Return" in Rate Making.
The Ten Factors on Which a Utility's Public Relations Are Based.
The Contrasts in Measuring the Value of Employees in Government and in Private Business.
The Political Fight Over Utility Control.

As Seen from the Side-lines ..... *John T. Lambert* 429
The March of Events 433
The Utilities and the Public 442
Public Utilities Reports 447
Index 448

Contents of previous issues of PUBLIC UTILITIES FORTNIGHTLY *can be found by consulting the "Industrial Arts Index" in your library.*

PUBLIC UTILITIES REPORTS, INC., PUBLISHERS

PUBLIC UTILITIES FORTNIGHTLY, a magazine dealing with the problems of utility regulation and allied topics, including the decisions of the state commissions and courts, now issued in conjunction with Public Utilities Reports, Annotated; endorsed by the National Associations of the Utility Industry and by the National Association of Railroad and Utilities Commissioners, and supported in part by those conducting public utility service, manufacturers, bankers, accountants and other users of the publication.

PUBLIC UTILITIES FORTNIGHTLY, published every other Thursday, 75 cents a copy; $15.00 a year.

PUBLIC UTILITIES REPORTS, ANNOTATED, 5 bound volumes with Annual Digest, $32.50 a year.

PUBLIC UTILITIES REPORTS, ANNOTATED, WITH PUBLIC UTILITIES FORTNIGHTLY, combined price $42.50 a year. Publication office, 615 Duffy-Powers Building, Rochester, N. Y.; editorial and executive offices, Munsey Building, Washington, D. C. Entered as second-class matter April 29, 1915, at the Post Office at Rochester, N. Y., under the Act of March 3, 1879.

OCTOBER

Reminders of Coming Events

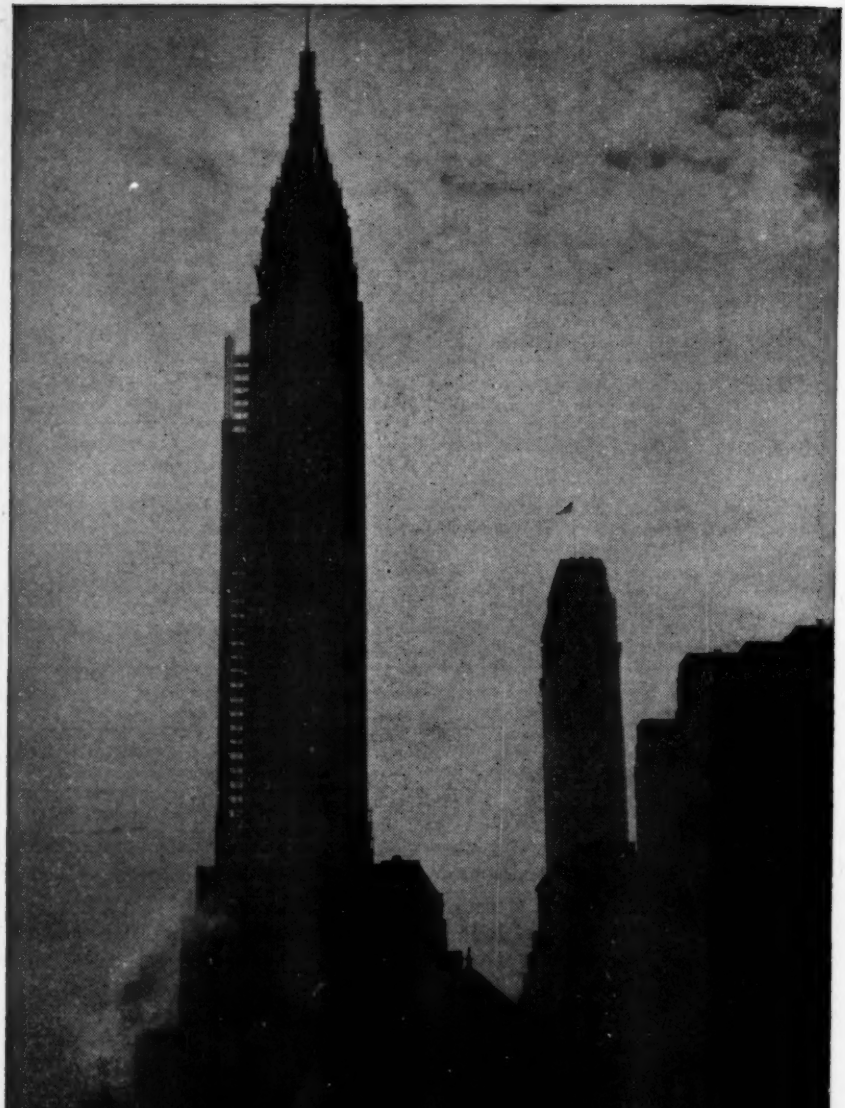
ALMANACK

Notable Events and Anniversaries

2	T*h*	WEBSTER WAGNER, inventor of the famous Wagner palace and sleeping cars, (killed in a railroad accident in 1882) was born in Montgomery Co., N. Y.; 1817.
3	F	All records for mail service were broken when a U. S. stage coach careened into Los Angeles from St. Louis in 17 days, 6 hours, and 10 minutes; 1859.
4	S*a*	¶ *MEMO.: The National Association of Railroad and Public Utilities Commissioners will open in Charleston, S. C., for a four-day session, November 12, 1930.*
5	S	Work on the first Atlantic cable was begun in Valentia, Ireland, 1857; the first message was sent over it exactly a year later, 1858.
6	M	Bostonians issued solemn warnings against the new-fangled notion of steam engines on the ground that "their unholy speed would lead to conçussion of the brain"; 1827.
7	T*u*	The first securities of a public service corporation to be listed on the N. Y. Stock Exchange were those of the Mohawk & Hudson Railroad, 1830.
8	W	The New York Central Railroad opened its lines for passenger travel between New York City and Albany; 1851. ¶ *Great Chicago fire, 1871.*
9	T*h*	FRANCIS HAWKSBEE excited the Royal Society with a demonstration of a glass globe, in which he created a light—an ancestor of the incandescent lamp; 1709.
10	F	The Railroad Commission of California, to consist of five members appointed by the Governor, was created under the provisions of constitutional amendments; 1911.
11	S*a*	The first passenger-carrying vehicle on any railroad, named *"Coach Experiment,"* was placed in service in England; 1825.
12	S	¶ *Members and guests of the American Gas Association will assemble in Atlantic City, N. J., today for the opening of their annual convention, 1930.*
13	M	Receivers were appointed for the Union Pacific Railway Company, 1893. ¶ Utility stocks were swept downward in the Wall Street crash, 1929.
14	T*u*	"Tense with fear and excitement," thirty daring passengers steamed up the Delaware from Philadelphia to Burling, N. J., two years before the regular service; 1788.
15	W	The first hydroelectric plant in the U. S. with power to operate 250 16-candle-power lamps, was tested at Appleton, Wisc., 1882.

"The use of money is all the advantage there is in having money."

—BENJAMIN FRANKLIN



Charles Phelps Cushing

Aspiration

"Too low they build who build beneath the stars."
—YOUNG